

# **CODE OF ETHICS FOR CHILD PROTECTION MEDIATORS**

## Ontario Association for Family Mediation **Code of Professional Conduct for Child Protection Mediators**

Approved: (date)

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## 1. **Foreword**

The following rules are intended to govern the relations of Child Protection Mediators with their clients, their professional colleagues, and the General Public so that all will benefit from high standards of practice in the mediation of child protection matters. The rules are to be observed in spirit as well as in practice.

## 2. **Definition of Terms**

### a. **Alternative Dispute Resolution**

For the purpose of this Code, Alternative Dispute Resolution (A.D.R.) is a strategy to streamline court processes and encourage alternatives to Court. It focuses on a more strengths-based, inclusive and collaborative approach to resolving child protection disputes, and encourages the involvement and support of the family, extended family, and the community, in planning and decision-making for children.

### b. **Child Protection Mediation**

For the purpose of this Code, “child protection mediation” as defined by policy directive to Children’s Aid Societies is:

A voluntary process of resolving disputes in which child protection workers and the family (including the child where appropriate) and any

other person putting forward or proposing to participate in a plan for the child, work together with the aid of a trained and impartial Child Protection Mediator who has no decision making power. The Child Protection Mediator assists the participants in reaching an agreement on the issues in dispute, in generating options for resolving their dispute and in developing a mutually acceptable plan that addresses the protection concerns identified.

**c. Voluntary**

It is acknowledged that being part of the child welfare system is usually not voluntary. For the purposes of this code, all participants must consent to use mediation as the method of trying to resolve the dispute.

**Child Protection Mediation - Differentiation from Family Mediation:**

- 1) The child protection agency has an interest in the agreement reached and therefore should be represented at the mediation;
- 2) Mediation of child protection cases is a state process not a private process.
- 3) There are cases that may be referred by a child welfare service provider in which the specifics of the mediated plan are not of concern to the Society and there is no child in need of protection. The Society's protection concern is that conflict be reduced by the development of a plan. The child welfare service provider is not part of the mediation process and this is not a child protection mediation under the C.F.S.A.

**3. Competence**

The OAFM has agreed to manage the Ontario Child Protection Mediation Roster, at the request of the Child Welfare Secretariat, Ministry of Children and Youth Services. The following criteria for eligibility have been established by the Ministry:

- 1) A child protection mediator on the provincial roster has satisfactorily completed the approved Child Protection Mediation Training and has the following prerequisites:
    - a professional degree or diploma in the social services or children's services
    - at least 60 hours of training in family mediation, both basic and advanced, to include a minimum of 20 hours of skill training;
    - at least 10 family law cases mediated to the point of agreement;
- OR
- Accreditation by the Ontario Association for Family Mediation (OAFM) or Certification by Family Mediation Canada;

- 2) A child protection mediator on the provincial roster, has the following:
  - A satisfactory criminal record check completed within the last three years; and
  - Three satisfactory professional references.
- 3) It is the obligation of anyone acting as a Child Protection Mediator to ensure that he or she is fully qualified to deal with the specific issues involved in each individual mediation.
  - a) It is acknowledged that Child Protection Mediators will have a diversity of education and training, but the obligation to refrain from rendering services outside of the limits of the Child Protection Mediator's qualification and capabilities remains.
  - b) Child Protection Mediators shall cooperate with and endeavor to involve other competent professionals where the situation requires it.
  - c) Child Protection Mediators shall engage in continuing education to ensure that their mediation skills are current and effective.
  - d) Child Protection Mediators shall perform their service in a conscientious, diligent and efficient manner in accordance with this code of conduct.
- 4) It is the obligation of the Child Protection Mediator to manage the process of mediation by:
  - a. Creating a safe environment
  - b. Demonstrating a non-judgmental attitude
  - c. Managing the process
- 5) It is the obligation of the Child Protection Mediator to understand the mandate of a children's aid society as set out in *The Child and Family Services Act* with respect to children who are or may be in need of protection.
- 6) It is the obligation of the Child Protection Mediator to understand the paramount purposes of *The Child and Family Services Act* and to bring such considerations to the mediation process.
- 7) It is the duty of the Child Protection Mediator to ensure that disputes regarding the facts giving rise to the protection concerns are not the subject of mediation. While the protection concerns do not need to be acknowledged by the participants, they form the basis of the mediation. It is the duty of the Child Protection Mediator to ensure that the mediated agreement addresses all child protection concerns identified by the children's aid society or any of the other participants.

#### 4. Duties of Confidentiality

The Child Protection Mediator acknowledges that child protection mediation is closed and deemed to be a without prejudice settlement discussion and that all communications, notes and record, remain confidential with the following exceptions, as set out in Ontario Regular 496/06 and re-stated here:

- a) The Child Protection Mediator and any party must repeat the statements of any other participant if it discloses new or additional protection concerns which give rise to a duty to report under s. 72 of *the Child and Family Services Act*.
- b) The Child Protection Mediator must tell the appropriate authorities when information is received that suggests a real or perceived threat to any person's life or physical safety;
- c) The Child Protection Mediator can speak to a third party **only** where an individual consents to the disclosure of his or her own personal information. However, the Child Protection Mediator can speak or write to the lawyer of any participant in the mediation, including the O.C.L., if applicable. Each participant can also discuss the content of the mediation with his or her counsel.
- d) The Child Protection Mediator, at the conclusion of mediation, can set out the terms of agreement, in principle, which shall be sent to each participant and their counsel (including the O.C.L., when appropriate), for review. This is a closed and confidential document which may be reviewed by any of the participants with their counsel or by the Children's Lawyer representing any child who is the subject of the mediation. It is the duty of the Child Protection Mediator to advise all participants to the mediation to obtain legal advice before proceeding to incorporate these terms into a legal agreement.
- e) The Child Protection Mediator can share with the Court any final legal agreement signed by the participants to the mediation.
- f) The Child Protection Mediator can talk or write about the case without using identifying information for research or educational purposes.
- g) The Child Protection Mediator acknowledges that confidentiality with respect to ADR methods undertaken pursuant to *the Child and Family Services Act* is governed by Ontario Regulation 496/06 and that s/he is familiar with this regulation.

#### 5. Impartiality

1. The Child Protection Mediator has a duty to be impartial in relation to the participants. Impartiality requires that the Child Protection Mediator shall not have preconceived opinions in favour of one participant over another.

a) The Child Protection Mediator shall disclose to the participants any biases he or she may have related to the issues to be mediated;

b) The Child Protection Mediator will refrain from mediating in cases where the Child Protection Mediator knows there has been any significant prior involvement by the Child Protection Mediator or any partner or associate of the Child Protection Mediator in private practice with one of the participants except after full disclosure of the involvement to, and express consent by, the other participant(s);

c) A lawyer-Child Protection Mediator, or any partner or associate of such lawyer-Child Protection Mediator, should decline to represent a participant in the mediation in any subsequent legal matter related to the issues mediated. Rather, the Child Protection Mediator should keep him or herself available as a neutral to assist the participants in future in the event that any modifications are required to the mediated settlement;

d) The perception of partiality on the part of the Child Protection Mediator by one or more of the participants does not in itself require the Child Protection Mediator to withdraw. In these circumstances, it is only the duty of the Child Protection Mediator to advise the participants of their right to terminate the mediation.

2. Notwithstanding impartiality, the Child Protection Mediator has a duty to promote the best interests of the child(ren) and to assist the participants to examine the separate and individual needs of the child(ren).

## **6. Agreement to Mediate**

The Child Protection Mediator has a duty to explain the mediation process clearly to the participants before they sign an Agreement to Mediate. In particular, the Child Protection Mediator shall do the following:

a) define mediation, distinguishing it from other methods of alternative dispute resolution;

b) determine the appropriateness of mediation for the participants in light of their particular circumstances;

- c) explain the confidentiality of mediation and the exceptions as set out in Ontario Regular 496/06 and request that the parties enter into a written agreement with respect to the confidentiality provisions.
- d) advise participants that any of the participants or the Child Protection Mediator has the right to suspend or terminate mediation at any time;
- e) advise the participants of the role of independent legal advice in accordance with paragraph eight of this Code. If the Child Protection Mediator is a lawyer, the lawyer-Child Protection Mediator shall inform the participants that he or she cannot give legal advice, nor represent any participant in any subsequent legal matter related to the issues mediated.
- f) discuss with the participants the Child Protection Mediator's specific procedures and practices;
- g) provide each participant with the proposed Agreement to Mediate and recommend that it be reviewed with a lawyer prior to the mediation. Review and sign the Agreement to Mediate with all participants prior to commencing mediation.
- h) discuss with each participant the requirement that all participants to the mediation agree to all terms.
- i) advise each participant that any agreement reached as a result of the mediation may give rise to:
  - i) a finding that a child is in need of protection;
  - ii) a Statement of Agreed Facts to be filed with the Court;
  - iii) a Plan of Care for the child/ren which may be filed with the Court
  - iv) a Court Order
  - v) a Voluntary Service Agreement; or
  - vi) other terms and conditions as agreed upon.

## **7. Information, Disclosure and Advice**

It is the duty of a Child Protection Mediator to actively encourage the participants to make decisions based upon sufficient information, knowledge and advice.

Every Child Protection Mediator has an ongoing obligation to advise participants of the desirability and availability of independent legal advice. While information of a general nature may be made available to the participants, each should be encouraged to obtain legal advice.

## **8. Independent Legal Advice**

It is the obligation of every Child Protection Mediator to advise participants:

- a) of the availability of independent legal advice for each participant;
- b) of the advisability of obtaining legal advice from the outset of mediation;
- c) that the document prepared by the Mediator outlining the terms of agreement, in principle, at the conclusion of the mediation, is a closed and confidential document which is unenforceable and has no legal effect. Each participant must be advised to obtain independent legal advice prior to signing any document incorporating the terms of agreement reached in mediation. In the event that the participants enter into a final agreement that agreement may be filed with the court.

## **9. Duty to Minimize Harm or Prejudice to Participants**

It is the obligation of the Child Protection Mediator to suspend or terminate mediation whenever continuation of the process would harm or prejudice one or more of the participants.

- a) the Child Protection Mediator shall suspend or terminate mediation where the ability or the willingness of one of the participants to effectively participate in the process is lacking;
- b) the Child Protection Mediator shall suspend or terminate mediation when its usefulness is exhausted or when continuing the process could harm or prejudice one or more of the participants or the child(ren).
- c) the Child Protection Mediator shall see that the participants are reaching agreement freely, voluntarily and without undue influence.

## **10. Public Communication**

1. The purpose of public statements concerning child protection mediation should be:
  - a) to educate the public generally about the process; and
  - b) to present the process of mediation objectively as one of several methods of alternative dispute resolution, in order to help the public make informed judgments and choices.
2. The Child Protection Mediator will describe his/her relationship with the Ontario Child Protection Mediation Roster as **Child Protection Roster Mediator, Ontario**

**Child Protection Mediation Roster.** The roster Child Protection Mediator must not include any reference in promotional materials to providing services for the Court or for the Ontario Government nor make statements that the Child Protection Mediator has been endorsed or qualified by the Court or the Ontario Government in any way.

**11. Duty to Encourage Reporting of Breaches of Code**

It is the obligation of Child Protection Mediators to encourage participants to report in writing real or apparent breaches of the Code, forthwith, to the President of the Ontario Association for Family Mediation. All concerns shall be forwarded by the O.A.F.M. to the Child Welfare Secretariat, Ministry of Children and Youth Services and will **not** be dealt with by the O.A.F.M.

Name of Mediator \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_