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REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 8 of 2004

[L.S.]

AN ACT to provide for mediation in Trinidad and Tobago

[Assented to 27th February, 2004]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. This Act may be cited as the Mediation Act, 2004. Short title

PART I
PRELIMINARY

Interpretation

2. In this Act—

“accredited mediation training programme” means a mediation training programme entered on the accredited mediation training programmes under section 7;

“approved mediation agency” means an agency entered on the register of approved mediation agencies under section 7;

Third Schedule

“Certification and Accreditation Regulations” means the Certification and Accreditation Regulations set out in the Third Schedule;

“certified mediator” means a person whose name has been entered on the register of certified mediators under section 7;

First Schedule

“Code of Ethics” means the code of ethics for mediators set out in the First Schedule;

“community mediation” means state-sponsored mediation in the communities of Trinidad and Tobago, however such communities may be delineated by regulations made under section 15(1);

“Court” means the Court of Appeal, the High Court or a Magistrate’s Court;

“court annexed mediation” means any mediation process conducted under the auspices of the Court;

Second Schedule

“Disciplinary Regulations” means the Disciplinary Regulations set out in the Second Schedule;

“Judiciary” means the Supreme Court of Judicature, the Magistrates Court and the Department of Court Administration;

“mediation” means a process in which a Mediator facilitates and encourages communication and negotiation between the mediation parties, and seeks to assist the mediation parties in arriving at a voluntary agreement;

“Mediation Agency” means a body which supplies mediation services to the public and maintains a roster of certified mediators;

“Mediation Board” means the Mediation Board of Trinidad and Tobago established under section 3;

“mediation party” means a person who participates in mediation and whose consent is necessary to resolve the dispute;

“mediation process” includes the mediation session together with all administrative processes and procedures leading to and necessary for the conduct of such mediation session and all processes and procedures after the completion of the mediation session ending with the signing of the mediation agreement or if there is no agreement, when the mediation session is otherwise terminated;

“mediation session” means a meeting between persons in dispute and a certified mediator for the purpose of resolving the dispute by mediation, and includes anything done for the purpose of—

(a) arranging the meeting; or

(b) following up anything raised in the meeting;

“mediator” means a neutral third party who conducts mediation;

“Minister” means the Minister to whom responsibility for community mediation is assigned;

“non-party participant” means a person, other than a mediation party or mediator, who is present at a mediation session or otherwise participates in a mediation process.

PART II

THE MEDIATION BOARD

Establishment of
Mediation Board

3. There is hereby established a body corporate to be known as the Mediation Board of Trinidad and Tobago hereinafter referred to as “the Mediation Board”.

Appointment,
composition and
quorum

4. (1) The Mediation Board shall be appointed by the President and shall comprise—

- (a) a Chairman, who shall be a judge of the Supreme Court or a judicial officer nominated by the Chief Justice;
- (b) a Deputy Chairman, who shall be a judicial officer nominated by the Chief Justice;
- (c) four members of the public nominated by the President in his own discretion;
- (d) two certified mediators, or for the purposes of the First Mediation Board, mediators nominated by the Attorney General;
- (e) a psychologist nominated by the Minister with responsibility for Health;
- (f) a person nominated by the Minister to whom responsibility for community mediation is assigned;
- (g) an attorney-at-law nominated by the Law Association of Trinidad and Tobago;
- (h) a representative of the academic staff of the Hugh Wooding Law School nominated by the Principal of the Law School; and

(i) the Administrative Secretary to the Chief Justice or his nominee who shall be the Secretary to the Board.

(2) The members of the Mediation Board appointed under subsection (1)(c) to (1)(h) shall hold office for a term of three years while members appointed under subsection (1)(a), (b) and (i) shall be *ex officio* members.

(3) The Chairman or Deputy Chairman, and any four members of the Mediation Board shall constitute a quorum.

5. (1) The Mediation Board shall perform the following functions: Functions and Powers

- (a) to formulate standards for the accreditation of mediation training programmes and to accredit such programmes;
- (b) to formulate standards for the certification of mediators and mediation trainers and to certify such mediators and mediation trainers;
- (c) to prescribe requirements to be complied with by an approved mediation agency and to approve such mediation agencies; and
- (d) to monitor accredited mediation training programmes and approved mediation agencies to ensure that the standards set under subsection (1)(a) and the requirements set under subsection (1)(c) are maintained.

(2) The Mediation Board shall exercise the following powers:

- (a) to enforce the observance of the Code of Ethics for certified mediators;

- (b) to investigate and discipline certified mediators in accordance with the Disciplinary Regulations;
- (c) to approve applicants for registration in accordance with section 7 and to revoke any such registration where the requirements for registration are no longer met; and
- (d) to do all such acts as may be necessary to give effect to the provisions of this Act.

The Registers

Mediation Board to
maintain Registers

6. The Mediation Board shall maintain the following registers:

- (a) a register of certified mediators which shall indicate where appropriate, areas of specialization of each mediator;
- (b) a register of approved mediation agencies;
- (c) a register of accredited mediation training programmes; and
- (d) a register of certified mediation trainers.

Procedure for entry
of a name on a
register

7. (1) A person, organization or agency who or which wishes to have his or its name or training programme entered on one of the registers referred to in section 6 shall—

- (a) apply in writing to the Mediation Board to be registered; and
- (b) satisfy the requirements contained in the relevant Part of the Third Schedule or the Fourth Schedule.

Third Schedule
Fourth Schedule

(2) Where the Mediation Board is satisfied that such person, organization, agency or training programme meets the requirements of the relevant Part of the Third Schedule or the Fourth Schedule for entry on such register, the Mediation Board shall enter the name of such person, organization, agency or training programme on the relevant register.

(3) Subject to section 8 an application for entry on the register of accredited mediation training programmes shall be made by the person or organization offering such training programmes.

8. (1) Where a person who holds a mediation training certificate from a programme that is not accredited under this Act and wishes to have his name entered on the register of certified mediators he shall apply to the Mediation Board to have the mediation training programme, in respect of which the certificate was issued, recognized for the purpose of entry on the register of accredited mediation training programmes.

Registration of
mediators trained
under certain
programmes

(2) Where the Mediation Board is satisfied that the training programme referred to in subsection (1) contains the necessary elements for mediation training, notwithstanding Part III of the Third Schedule that programme and its name and date shall be entered on the register of approved mediation training programmes in a part reserved for such programmes of limited recognition.

9. For the purpose of this Act, the Judiciary, the Industrial Court, the Tax Appeal Board, the Environmental Commission, the Tobago House of Assembly and the Ministry to which responsibility for community mediation is assigned, shall be deemed to be approved mediation agencies.

Approved Mediation
agencies

PART III

CONFIDENTIALITY AND RELATED MATTERS

10. For the purposes of this Part “Confidential information” means any information expressly intended by the source not to be disclosed, or which is otherwise

Confidentiality

obtained under circumstances that would create a reasonable expectation on behalf of the source, that the information shall not be disclosed and includes—

- (a) oral or written, communications, made in the mediation process, including any memoranda, notes or work-product of the mediator, mediation party or non-party participants;
- (b) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing or reconvening mediation or retaining a mediator; and
- (c) any other information expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed.

Non-disclosure of
Confidential
information

11. (1) A certified mediator or any person who in the course of his employment or training, comes into possession of any confidential information obtained in a mediation session shall not disclose any such confidential information obtained in that session.

(2) Subsection (1) does not apply where—

- (a) the disclosure is required by or under an Act of Parliament;
- (b) the disclosure is made with the consent of the mediation parties;
- (c) the disclosure is made with the consent of the person who gave the confidential information; or

(d) the person referred to in subsection (1), believes on reasonable grounds that—

- (i) a person's life or health is under serious and imminent threat and the disclosure is necessary to avert, or mitigate the consequences of its realization;
- (ii) the disclosure is necessary to report to the appropriate authority the commission of an offence or prevent the likely commission of an offence; or
- (iii) the disclosure becomes necessary for the purpose of disciplinary proceedings by the Panel.

(3) In this section “offence” means an offence involving—

- (a) violence, or the threat of violence, to a person; or
- (b) intentional damage to property or the threat of such damage.

12. (1) No legal proceeding may be commenced Immunity from suit against a certified mediator or any person or official involved in the mediation process for any act done or omitted to be done in the course of the performance of his functions, in reference to such mediation process.

(2) Notwithstanding subsection (1), if a person suffers loss or damage as a result of the wrongful disclosure of confidential information by a certified mediator or by any person who in the course of his employment or training gained access to such confidential information, that person shall be entitled to bring suit for damages.

(3) Subject to subsection 11(2), the certified mediator or any other person involved in the mediation process is not compellable as a witness, to give evidence of any matter which occurred during the mediation session or any confidential information which came to his knowledge during the mediation process.

Admissibility of
evidence

13. (1) Evidence of—

- (a) a communication made in a mediation session; or
- (b) a document, whether delivered or not, prepared—
 - (i) for the purposes of;
 - (ii) in the course of; or
 - (iii) pursuant to a decision taken or undertaking given in a mediation session,

is not admissible in any proceedings.

(2) Notwithstanding subsection (1), documents or communications shall be admissible where—

- (a) the mediation parties consent to the evidence being adduced in the proceedings concerned;
- (b) any of the mediation parties has tendered the communication or document in evidence in proceedings in a foreign court and all the other mediation parties so consent;
- (c) the substance of the evidence has been disclosed with the express or implied consent of all the mediation parties;
- (d) the substance of the evidence has been partly disclosed with the express or implied consent of the mediation parties, and full disclosure of the evidence is reasonably necessary to enable a proper understanding of the other evidence that has already been adduced;

- (e) the document or communication includes a statement to the effect that it was not to be treated as confidential;
- (f) the evidence tends to contradict or to qualify evidence that has already been admitted, about the course of an attempt to settle the dispute;
- (g) the proceeding in which it is sought to adduce the evidence is a proceeding to enforce an agreement between the mediation parties to settle the dispute, or a proceeding in which the making of such an agreement is in issue; or
- (h) evidence that has been adduced in the proceeding, or an inference from evidence that has been adduced in the proceeding, is likely to mislead the court, unless evidence of the communication or document is adduced to contradict or to qualify that evidence.

PART IV

COURT-ANNEXED MEDIATION

14. (1) Where in any matter other than a criminal matter the court considers it appropriate to refer parties to mediation, the court may refer them to a certified mediator who is—
Court may refer matter to mediation

- (a) a public officer; or
- (b) in the employment of the Judiciary; or
- (c) on the judiciary's roster of mediators.

(2) The parties to any matter before the court, may with the approval of the court, agree to retain the services of a mediator who is not included under subsection (1).

(3) Any expenses incurred under subsection (2) shall be borne by the parties or either of them as the court may direct or as the parties may agree.

Rules
Chap. 4:01

15. The Rules Committee established under the Supreme Court of Judicature Act, may make Rules for court-annexed mediation under this Act.

PART V

COMMUNITY MEDIATION

Regulations

16. The Minister may make Regulations governing Community mediation including—

- (a) the delineation of communities for the purposes of the Act;
- (b) the procedure for community mediation as a result of self referral or voluntary access;
- (c) the use of certified mediators and mediation centres.

PART VI

REGULATIONS AND REPEAL

17. The Mediation Board may with the approval of the Attorney General and subject to affirmative resolution of Parliament, make regulations to—

- (a) govern its own procedures;
- (b) prescribe requirements to be complied with by an approved mediation agency;
- (c) provide for complaints and disciplinary procedures for certified mediators and certified mediation trainers;
- (d) provide for a complaints procedure for approved mediation agencies save and except for the institutions deemed to be approved mediation agencies under section 9;
- (e) provide for procedures for complaints concerning accredited training programmes;
- (f) provide for the process, procedure and standards for accreditation of mediation training programmes;

- (g) provide for the process, procedure and standards for the certification of mediators;
- (h) approve mediation agencies;
- (i) provide for the certification of mediators who are the holders of mediation certificates from training programmes not accredited under section 7;
- (j) provide for the deregistration of certified mediators, certified trainers or accredited mediation training programmes;
- (k) set out procedures for the deregistration of approved mediation agencies save and except the institutions deemed to be approved mediation agencies under section 9;
- (l) provide for the periodic renewal of registration of certified mediators, certified trainers, accredited mediation training agencies and approved mediation agencies save and except the institutions deemed to be approved mediation agencies under section 9;
- (m) prescribe a code of ethics for mediators; and
- (n) to provide for all processes, procedures, standards and requirements as may be necessary to give effect to the provisions of this Act.

18. The “Code of Ethics”, “Disciplinary Regulations”, “Training Certification and Accreditation Regulations”, and the “Criteria for the Approval of a Mediation Agency” set out in the First, Second, Third and Fourth Schedules respectively, shall be effective as regulations to be used by the Board, from the commencement of this Act, until the Board makes its own regulations under section 17, and thereafter the effectiveness of the said Schedules shall expire.

Repeal of
Act No. 13 of 1998

19. The Community Mediation Act, 1998 is hereby repealed.

FIRST SCHEDULE

[Section 5(2)(a)]

CODE OF ETHICS

Application

1. This code of ethics shall apply to certified mediators and is intended to assist and guide certified mediators in their conduct and to provide a framework within which mediation is conducted and regulated.

Interpretation

2. In this Code—

“Conflict of interests” means direct or indirect financial personal interests in the outcome of the dispute or an existing or past financial, business, professional, family or social relationship which is likely to affect the impartiality or reasonably create an appearance of partiality or bias;

“impartiality” means freedom from favouritism and bias either by words, action or by appearance and implies a commitment to serve all mediation parties as opposed to a single mediation party in moving towards or reaching agreement.

General Responsibilities

General
Responsibilities of
certified mediators

Certified mediators shall—

- (a) conduct themselves in a manner which will instill confidence in the mediation process, confidence in their integrity and confidence that disputes entrusted to them are handled in accordance with the highest ethical standards;
- (b) be responsible to the parties, to the profession, to the public and to themselves, and accordingly shall be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interest, but rather the needs and interests of the mediation parties;

- (c) act fairly in dealing with the mediation parties, have no personal interests in the terms of the settlement, show no bias towards individuals or parties involved in the disputes and be certain that the mediation parties are informed of the process in which they are involved.

Ethical Standards

4. (1) The primary role of the mediator is to facilitate the Self Determination voluntary resolution of a dispute.

(2) The primary responsibility for the resolution of the dispute and the shaping of a settlement rests with the mediation parties.

(3) A mediator shall recognize that mediation is based on the principle of self-determination by the mediation parties and upon the ability of the mediation parties to reach a voluntary uncoerced agreement.

(4) A mediator shall request and encourage self-determination by the mediation parties in their decision whether, and on what terms, to resolve their dispute, and, subject to paragraph 13, shall refrain from being directive or judgmental regarding the issues in dispute and options for settlement.

(5) A mediator shall encourage mutual respect between the mediation parties, and shall take reasonable steps, subject to the principle of self-determination, to limit abuses of the mediation process.

(6) A mediator shall make the mediation parties aware, where appropriate, of the option and importance of consulting other professionals to assist the mediation parties in the making of informed decisions.

(7) When a mediator believes a mediation party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the mediation parties to seek independent professional advice.

(8) While a mediator may point out possible outcomes of a case, the mediator shall not offer a personal or professional opinion as to how the Court in which the case has been filed will resolve the dispute.

(9) A mediator shall not use during the mediation process any title or honorific to which he may be entitled.

5. (1) A mediator shall mediate only when the mediator has the Competence necessary qualifications, training and experience to enable him to satisfy the reasonable expectation of the mediation parties.

(2) A mediator shall acquire and maintain professional competence in mediation, and shall at all times strive to improve his professional skills and abilities by participating in relevant continuing education programmes.

(3) A mediator shall have information regarding his relevant training, education and experience available to the mediation parties.

Impartiality

6. (1) A mediator shall provide mediation services only for those disputes in which he can be impartial with respect to all the mediation parties and the subject matter of the dispute.

(2) A mediator shall in words and action, maintain impartiality towards the mediation parties and where his impartiality is in question, shall decline to serve or shall withdraw from serving as a mediator.

(3) Where at any time prior to, or during the mediation process the mediator is unable to conduct the mediation process in an impartial manner, the mediator shall so inform the mediation parties and shall withdraw from providing services, even if the mediation parties express no objection to the continuation of the mediator's services.

Confidentiality

7. (1) A mediator shall discuss issues of confidentiality with the mediation parties before beginning the mediation process including, limitations on the scope of confidentiality and the extent of confidentiality provided in any private session that the Mediator holds with a mediation party

(2) All proceedings shall be confidential and the mediator shall not voluntarily disclose to anyone who is not a mediation party to the mediation process, any information obtained through the mediation process except, with the written consent of the mediation parties, or when the information discloses an actual or potential threat to human life or safety.

(3) In the cases referred to in subparagraph (2), the mediator shall advise the mediation parties, when appropriate to the mediation process, that the confidentiality of the mediation proceedings cannot necessarily be guaranteed.

Informed Consent

8. (1) A mediator shall structure the mediation process so that the mediation parties make decisions based on sufficient information and knowledge.

(2) The mediator has an obligation to ensure that all mediation parties understand the nature of the process, the procedures, the particular role of the mediator and the mediation parties' relationship to the mediator.

(3) Where at any time the mediator believes that any mediation party is unable to understand the mediation process or participate fully in it, whether because of mental impairment, emotional disturbance, intoxication, language barriers or other reasons, the mediator shall limit the scope of the mediation process in a manner consistent with the mediation party's ability to participate, and/or recommend that the mediation party obtain appropriate assistance in order to continue with the mediation process or shall terminate the mediation process.

9. (1) A mediator shall disclose all actual and potential Conflict of interests conflict of interests known to him and thereafter shall withdraw from the mediation, if any mediation party objects to him continuing as mediator.

(2) Where the mediator determines that the conflict is so significant as to cast doubt on the integrity of the mediation process, the mediator shall withdraw from the process even if the mediation parties express no objection to the continuation of the mediator's services.

(3) Save with the consent of the mediation parties, and for a reasonable time under the particular circumstances, a mediator who also practices in another profession shall not establish a professional relationship in that other profession with one of the mediation parties, or any person or entity, in a substantially factually related matter.

(4) Subject to paragraph 13, a mediator shall limit himself solely to the role of mediator, and shall refrain from giving legal or therapeutic information or advice and otherwise engaging during mediation in counselling or advocacy.

(5) The duty to disclose conflict of interests shall be a continuing obligation throughout the mediation process.

10. In family mediation, the mediator has a responsibility to Responsibility to children in Family Mediation promote the mediation parties' consideration of the interest of children in relation to the issues being mediated. The mediator also has a duty to assist the mediation parties to examine, apart from their own desires, the separate and individual needs of such children.

11. (1) A mediator shall at the outset of the mediation process, Fees fully disclose and explain the basis of compensation, fees and charges, if any, to the mediation parties.

(2) A mediator shall not enter into a fee agreement which is contingent upon the results of the mediation or the amount of the settlement but may, however, specify in advance a minimum charge for a mediation session without violating this provision.

Advertising

12. (1) A mediator shall not make untruthful or exaggerated claims about the mediation process, its costs and benefits, its outcome or the mediator's qualifications and abilities.

(2) All advertising shall honestly represent the services to be rendered and no claims of specific results or promises which apply to one party over another party should be made for the purpose of obtaining business.

(3) No commission, rebates, or other similar forms of remuneration shall be given or received by a mediator for the referral of clients.

Evaluative
Proceeding

13. Unless the parties have agreed in writing before the commencement of the mediation session that they wish the mediator to evaluate or adjudicate upon the merits of their respective positions, as for example in procedures typically known as "early neutral evaluation" and "med-arbs", a certified mediator may not do so.

SECOND SCHEDULE

[Section 5(2)(b)]

DISCIPLINARY REGULATIONS

Application

1. (1) These disciplinary proceedings apply to complaints against any individual placed on the Register of Certified Mediators pursuant to section 7 of this Act.

(2) Where a person is registered as a certified mediator such registration may be revoked for cause in accordance with these provisions.

Disciplinary Panel

2. (1) The Mediation Board shall appoint a Disciplinary Panel consisting of three members which shall be a standing committee, to hear and determine complaints against mediators.

(2) The Disciplinary Panel shall consist of an attorney-at-law of at least seven years standing and two certified mediators who shall not be members of the Mediation Board.

Procedure

3. (1) A complaint against a mediator hereafter called the mediator/respondent shall be in writing, signed by the complainant, and shall include the complainant's name, address and telephone number.

(2) The complaint referred to in subparagraph (1), shall be mailed or delivered to the Mediation Board at its address and shall—

- (a) identify the mediator/respondent; and
- (b) make a short and plain statement of the conduct forming the basis of the complaint.

(3) Subject to subparagraph (4), the complaint shall be made within thirty days of the conclusion of the mediation.

(4) The Mediation Board in its discretion, for good cause, may extend the time limit within which the complaint may be made.

(5) The Disciplinary Panel shall review the complaint to determine whether the allegations, if true, constitute a violation of the Code of Ethics.

(6) If the allegations made in the complaint, would not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the mediator/respondent shall be notified in writing.

(7) Where the Disciplinary Panel concludes that the allegations of the complaint if true, constitute a violation of the Code of Ethics, the Disciplinary Panel shall hear and determine the complaint and in all such cases, the Disciplinary Panel shall serve on the mediator/respondent, by personal service or by registered mail, a copy of the complaint, a request for a written response to the allegations and to any specific questions posed by the Disciplinary Panel.

(8) It shall not be considered a violation of section 12 of the Act or paragraph 5 of this Code of Ethics, for the mediator/respondent to disclose information acquired in mediation session if that information falls within section 12(2) of the Mediation Act and except for good cause shown, if the mediator/respondent fails to respond to the complaint in writing within thirty days, the allegations shall be deemed admitted.

Referral of Complaint
to volunteer mediator

4. (1) The Disciplinary Panel may, in its discretion, refer the complainant and the mediator/respondent to mediation conducted by a volunteer mediator to resolve the issues raised by the complainant.

(2) If the complaint is resolved through mediation, the Disciplinary Panel shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Disciplinary Panel in which case the Disciplinary Panel shall impose such sanctions.

(3) Where no agreement is reached in mediation, the Disciplinary Panel shall hear and determine the complaint.

Hearing

5. (1) At the hearing the parties may be represented by attorneys but the rules of evidence shall not be strictly applied.

(2) The Disciplinary Panel at its own initiative, or by request of the parties, may request the attendance of witnesses and the production of documents and other evidentiary matter.

Appeals

6. (1) A party may appeal the Disciplinary Panel's decision to an Appellate Panel consisting of not less than three members of the Mediation Board.

(2) An appeal must be filed within forty-five days from the date of decision.

Effect of Criminal
Conviction

7. (1) Where it comes to the attention of the Mediation Board that a certified mediator has been convicted of a criminal offence, the Mediation Board may call upon such certified mediator to show cause why he should not be deregistered.

(2) A certificate of conviction issued by the court shall be sufficient evidence of the mediator's conviction for an offence.

Sanctions

8. The Disciplinary Panel or the Appellate Panel may impose sanctions, including but not limited to—

- (a) the issue of a private reprimand;
- (b) the designation of corrective action necessary for the mediator/respondent to remain on the register;
- (c) notifying any approved mediation agency with which the mediator is affiliated of the complaint and the result of its disposition;

- (d) the removal of the mediator/respondent from the register of certified mediators, with conditions for reinstatement if any.

9. (1) All files, records, and proceedings of the Disciplinary Confidentiality Panel and the Appellate Panel that relate to or arise out of any complaint shall be confidential, except—

- (a) as between the Mediation Board, members of the Disciplinary Panel, the Appellate Panel and staff;
- (b) as otherwise required or permitted by rule or statute; and
- (c) to the extent that the complainant and the mediator/respondent waive confidentiality.

(2) Where sanctions are imposed against the mediator/respondent pursuant to paragraphs (b) to (d) of paragraph 8 such sanctions shall be of public record, and the files of the Disciplinary Panel and the Appellate Panel shall remain confidential.

THIRD SCHEDULE

(Section 7)

TRAINING CERTIFICATION AND ACCREDITATION REGULATIONS

PART I

STANDARDS AND QUALIFICATIONS FOR CERTIFICATION OF MEDIATORS

1. (1) A candidate for certification as a mediator in civil Candidates for
non-family matters shall— Certification

- (a) complete a minimum of forty hours in a standard mediation training programme accredited by the Mediation Board; and
- (b) demonstrate practical experience and suitability, by having observed a minimum of four mediation sessions conducted by a certified mediator and having conducted four mediation sessions under the supervision and observation of a certified mediator; or

(c) otherwise have been assessed by the Mediation Board to have demonstrated the requisite practical experience and suitability.

(2) For the purposes of assessing a candidate's practical experience and suitability for mediation the Mediation Board—

(a) may require the candidate to attend an interview to assess the candidate's experience in dispute resolution; and/or

(b) may in its discretion, require a candidate to undergo an evaluation by conducting a mediation with the candidate as a mediator in a role-play.

(3) The qualities which the Mediation Board shall take into account in determining suitability under subparagraph (2) above, are the following:

(a) objectivity;

(b) acceptance of individual differences;

(c) ability to analyze;

(d) ability to recognize and manage power;

(e) strong verbal and communication skills;

(f) active listening skills;

(g) ability to articulate and identify the issues and interests of the parties;

(h) ability to control the process without dominating the parties;

(i) ability to generate movement in the discussion of the dispute;

(j) creativity/inventiveness and focus.

(4) No candidate shall be certified by the Mediation Board as a mediator unless such candidate submits two references from persons who can testify that the candidate is of good character and integrity.

2. A candidate for certification as a family mediator shall—

(a) be certified as a mediator in civil non-family matters;

- (b) complete a minimum of forty hours in family mediation training programmes accredited by the Mediation Board; and
- (c) be an attorney-at-law with practical experience in family matters or have a degree or extensive experience and training in social work, mental health matters, behavioural or social sciences or any other equivalent qualification, and either—
 - (i) have observed three family mediations conducted by a certified family mediator and have conducted three family mediation sessions under the supervision and observation of a certified family mediator; or
 - (ii) have been otherwise assessed by the Mediation Board to have demonstrated the requisite practical experience in and suitability for family mediation.

PART II

(Section 8)

CERTIFICATION OF MEDIATION TRAINERS REGULATIONS

1. Accredited Mediation Training Programmes shall employ ^{Training Programmes} only those trainers and subject matter specialists who meet the qualifications, training and standards outlined below and who have been certified by the Mediation Board.

2. In order to become certified as a trainer, a candidate shall ^{Trainer Qualifications} prove that he has—

- (a) successfully completed a minimum of one hundred hours of mediation training; and
- (b) participated in a minimum of ten mediation sessions as the mediator;
- (c) training in instructional development or has successfully completed any other training skills development programme; or
- (d) been otherwise assessed by the Mediation Board to have demonstrated the requisite practical experience and suitability in mediation training.

Subject Matter
Specialist

3. A subject matter specialist shall—
 - (a) have a substantial part of his professional practice in the area about which the subject matter specialist is conducting training;
 - (b) have the ability to connect his area of expertise with the mediation process.

PART III

(Section 10)

ACCREDITATION OF MEDIATION TRAINING PROGRAMMES REGULATIONS

General

Requirements

1. An individual or organization who or which wishes to have his or its mediation training programme accredited shall satisfy the requirements of this part.

Standard Training
Programme
Co-ordination

2. (1) An individual shall be designated to be responsible for each mediation training programme and held accountable on behalf of the programme for—
 - (a) providing the Mediation Board with résumés of all trainers and subject matter specialists who will be used during the programme;
 - (b) ensuring proper facilities are secured and that appropriate equipment is provided;
 - (c) ensuring that the training agenda is followed and that all content is covered;
 - (d) ensuring that evaluation forms are completed and maintained;
 - (e) ensuring that a certified trainer is in attendance at all times; and
 - (f) ensuring that no certificate is issued to a participant who fails to complete the requirements of attendance and participation.

- (2) Mediation training programmes shall be presented for a minimum duration of forty contact hours.

3. (1) When applying for accreditation, an individual or organization shall provide the Mediation Board with all training material which will be used in the training programme. ^{Submission of training materials}

(2) The material shall include, but is not limited to—

- (a) the training manual that is to be given to the participants including the required reading; and
- (b) all exercises and handouts; and a copy of all role-plays and videos or other electronically displayed material.

(3) Revisions, deletions and additions to the training materials shall be reported to the Mediation Board prior to any course offering.

4. (1) An individual or organization shall seek approval from the Mediation Board at least twenty-eight days in advance of a mediation training programme by submitting a detailed programme agenda which shall be reviewed by the Mediation Board for compliance with the training standards. ^{Agenda Approval}

(2) The agenda shall be submitted in a format which easily identifies—

- (a) the presentation topic;
- (b) the time allotted to each topic;
- (c) the learning objectives covered under each topic; and
- (d) any required activities, e.g., writing agreement exercises, showing of video simulations, role-plays, etc., covered under the presentation topic.

(3) Any deficiencies in the programme agenda shall be corrected prior to the commencement of the training programme and failure to correct deficiencies shall be a violation of the training standards and may result in the programme not being accredited.

5. (1) All training programmes shall provide the participants with the required reading listed below but time spent reading required material shall not count towards the required number of hours of training and shall be completed by participants at times when the training programme is not being conducted. ^{Readings}

(2) Trainers shall incorporate some methods of ensuring that the required readings are completed and shall ensure that the current legislation and rules governing mediation are provided to the participants.

Training
Methodology

6. The training methodology shall be as follows:

- (1) Pedagogy—Training programmes shall include, but are not limited to the following: lectures, group discussions, written exercises, mediation simulations and role-plays.
- (2) In addition, readings shall be provided by the trainer to supplement the training.
- (3) Written Exercises—written exercises shall include the reducing of a mediation agreement to writing.
- (4) Role-play Requirements—the objective of a role-play is for a participant to develop confidence and experience. Each participant must have an opportunity to mediate in role-play under the observation of a certified trainer or coach as follows:
 - (a) Role-plays—every participant must take part in at least two continuous role-plays, acting as the sole mediator and two continuous role-plays acting as a disputant.
 - (b) Mediation Demonstration—all training programmes shall present a role-play mediation simulation (either live or by video).
 - (c) Class Size—class size shall be limited to thirty participants.

Participant
Attendance

7. A training programme shall require participants to complete their training requirements by attending one entire training programme in which the certified trainer is responsible for ensuring that the integrity of each portion of the programme is not compromised and any portion of training missed shall be made up as directed by the trainer. If a participant misses portions of the training programme which compromise the integrity of the programme, the training programme shall require the participant to repeat an entire programme.

Completion
of training

8. In order for a participant to be certified after the completion of a training programme, the trainer shall provide to the Mediation Board at the conclusion of the training, written documentation that

the participant has successfully completed the programme and showing—

- (a) the attendance by the participant at the complete training programme;
- (b) completion of all requirements of the training programme; and
- (c) the effective demonstration of the skills necessary to become a mediator.

9. In order to be accredited, each standard mediation training programme shall include the following topics:

Content of
Standard Mediation
Training Programme

(a) Conflict Resolution Concepts—

- (i) that define and understand the difference between non-litigation methods of dispute settlement, including negotiation, mediation and arbitration;
- (ii) that identify criteria by which parties select a method of dispute settlement for resolving particular disputes and evaluate the strengths and weaknesses of any dispute settlement method;
- (iii) that assist the participant to understand and demonstrate effective use of basic principles of negotiation and how mediation is an extension of negotiation; and
- (iv) that contrast mediation with litigation and demonstrate an understanding of the difference in roles of judges, lawyers, experts, mediators, arbitrators;

(b) Court Process—

- (i) explain the consequences of a mediated agreement as well as a failure to reach agreement;
- (ii) identify the statutes, rules, local procedures and forms governing mediation;

(c) Mediation Process and Techniques—

- (i) identification of the stages and components of the mediation session;
- (ii) understand and demonstrate the role of the mediator in structuring the mediation session, such as conducting an opening statement, preparing a party to mediate,

- maintaining decorum, professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location, number of sessions, establishing the format of each session and focusing discussion;
- (iii) understanding the importance of demonstrating empathy, building rapport, establishing trust, setting a co-operative tone, demonstrating neutrality and impartiality, demonstrating sympathetic listening and questioning, empowering parties, and remaining non-judgmental;
 - (iv) identification and demonstration of the characteristics which enhance or undermine the effectiveness of the mediator, including language use, non-verbal communication and eye contact;
 - (v) identification of the principles and functions which define the mediator's role and distinguishes it from other forms of dispute resolution processes;
 - (vi) identification of those procedural elements which must be satisfied prior to the entry of the parties into the mediation room, including seating of parties and set-up of the room;
 - (vii) understanding that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator and shall inform the mediation participants that mediation is a consensual process; the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required by law;
 - (viii) understanding and demonstrating the mediator's role in identifying issues and developing a full understanding of the parties' agenda;

- (ix) framing issues in neutral language and in such manner that the parties' respective interests are identified and communicated;
- (x) differentiating between issues which are appropriate for mediation and those that are not appropriate;
- (xi) identification of individuals who are entitled to participate in the mediation session as well as those non-parties who may need to be present;
- (xii) identification of situations in which participation of non-parties, e.g., grandparents, children, new spouses may be necessary in the mediation;
- (xiii) identification of and demonstration techniques to obtain closure;
- (xiv) identification of the circumstances in which issues are appropriate for discussion in joint session and those which should first be discussed in separate session;
- (xv) identification of appropriate techniques for mediating cases in which one or more parties are represented by attorneys;
- (xvi) identification of appropriate techniques for handling difficult situations, e.g., a party walks out, a party makes personal attacks on another party or mediator, a party is not really engaged in the mediation, a party or attorney is very recalcitrant, a party or non-party is emotionally overwrought or a party appears to be physically ill;

(d) Communications Skills—

- (i) identification and demonstration of the essential elements for effective listening, questioning and note taking;
- (ii) identification of and demonstrate appropriate non-verbal communication;
- (iii) understanding that a mediator shall cause the terms of any agreement reached to be recorded appropriately and discuss with the parties and counsel, if any, the process for formalization and implementation of the agreement;

- (iv) development of an awareness that people differ in how they make decisions, how they process information and how they communicate;

(e) Standards of Conduct/Ethics for Mediators—

- (i) identify the mediator's ethical obligations and potential ethical dilemmas in the mediation context. Identify and demonstrate an appropriate course of action when confronted with an ethical dilemma;
- (ii) understanding the mediator's responsibility to the parties and to the courts;
- (iii) understanding when a mediator shall adjourn, terminate, cancel or postpone a mediation session;
- (iv) understanding that a mediator shall respect the roles of other professional disciplines in the mediation process and shall promote co-operation between mediators and other professionals;
- (v) understanding that a mediator shall promote awareness by the parties of the interest of persons affected by actual or potential agreements who are not represented at mediation;

(f) Diversity Issues—

- (i) recognizing personal biases, prejudices, and styles which are the product of one's background and personal experiences;
- (ii) understanding socio-economic, cultural, racial, ethnic, age, gender, religious, sexual orientation and disability issues which may arise in mediation and/or affect the parties' negotiation style, ability or willingness to engage in mediation;

(g) Attorneys and Mediation—

- (i) understanding the role of litigants' attorneys in the mediation process and the potential for conflicts;

- (ii) understanding the attorney-client relationship within the context of mediation;
- (iii) understanding the need to establish credibility with attorneys and parties.

Accreditation of Family Mediation Training Programmes

10. Paragraphs 1–8 of this Part governing the accreditation of mediation training programmes shall also apply to the accreditation of Family Mediation Training Programmes.

11. The content of a Family Mediation Training Programme shall be as follows:

- (a) Psychological issues in separation and divorce and dynamics—

The participant is required to—

- (i) understand the impact divorce has on individual and on family dynamics and the implications for the mediation process;
- (ii) identify and understand how emotions impact on divorce issues and a party's ability to effectively mediate;
- (iii) identify the indicators of domestic violence;
- (iv) understand the impact domestic violence has on the parties and their capacity to participate meaningfully in the mediation session;
- (v) identify the stages of divorce and grief and the implications for the mediation process;
- (vi) understand the impact of grandparents, step-parents and significant others on family systems and the mediation process;

- (b) Issues concerning the needs of children in the context of divorce—

The participant is required to—

- (i) understand the needs of children and the effect of divorce on their relationships with their mother, father, step families, siblings and others in the family relationship;

- (ii) understand the impact the mediation process can have on the children's well-being and behaviour and recognize when and how to involve children in mediation;
- (iii) understand the definitions and concepts of co-parenting and shared responsibility;
- (iv) understand children's developmental stages and how they relate to divorce and parenting arrangements;
- (v) understand the impact of parental conflict on children's well-being and the parental alienation syndrome;
- (vi) understand and be able to assist parties in developing options for different parenting arrangements which consider the needs of the children and each parent's capacity to parent;
- (vii) identify the indicators of child abuse and/or neglect;

(c) Family Law—

The participant is required to understand the relationship of the following to family mediation:

- (i) access to children;
- (ii) shared parental responsibility;
- (iii) custody, care and control;
- (iv) maintenance for children and guidelines for maintenance for children;
- (v) maintenance for spouse and guidelines for maintenance of spouse;
- (vi) maintenance for cohabitant and guidelines for maintenance for cohabitant;
- (vii) domestic violence;
- (viii) abuse and neglect;

- (ix) paternity;
- (x) matrimonial property rights;
- (xi) occupation of the matrimonial home;
- (xii) cohabitant property rights;

(d) Family Economics—

This part of the programme is intended to assist the parties in effectively gathering personal and family financial information and participants are required to understand the significance of—

- (i) domicile;
- (ii) matrimonial home;
- (iii) transfers of property;
- (iv) legal expenses;
- (v) life insurance products;
- (vi) alimony; and
- (vii) pensions and retirement plans;

(e) Community Resources and Referral Process—

Participants shall be required to—

- (i) understand and identify when to use outside experts effectively or how to assist the parties in deciding on appropriate community resources;
- (ii) identify situations in which the mediator should suggest that the parties contact independent legal counsel, postpone or cancel mediation or refer the parties to other resources;
- (iii) identify appropriate courses of action when confronted with substance abuse during the mediation session;
- (iv) understand when to refer parties to services for child protection and domestic violence.

FOURTH SCHEDULE

(Section 9)

CRITERIA FOR THE APPROVAL OF A MEDIATION AGENCY

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| Undertaking | 1. The agency shall give an undertaking to the Mediation Board to comply with the provisions of the Mediation Act, 2004 including these criteria. |
| Primary Criteria | 2. The agency shall require, as the primary criterion in selection of a person for registration with that agency, that the person is registered as a certified mediator under the Mediation Act, 2004. But if the agency has additional requirements or standards for selection for registration as a mediator, the agency shall have in place explicit, transparent and verifiable procedures for assessing such a person. |
| Assessment for registration | 3. If the agency requires the assessment of a person for registration, or re-registration as a mediator, such assessment shall be made by a body competent to do so, free from any conflict of interest. This criterion will be met if the assessment is made by a selection panel consisting of two or more members. |
| Selection Panel | 4. The following rules apply to a selection panel: <ul style="list-style-type: none">(a) at least one member of a selection panel shall have a background in mediation as well as practical experience. A mediation background may include having had responsibility or mediation training and/or coaching, provided the member has had practical experience in mediating disputes;(b) any of an applicant's trainers or coaches who meets the above criteria may be included as a member of the selection panel but may not form a majority on such panel. |
| Other obligations | 5. The agency shall also— <ul style="list-style-type: none">(a) state its policies in an explicit, transparent and verifiable way; |

- (b) establish and keep up-to-date a register, a copy of which shall be provided to the Mediation Board, on a continual up-dated basis, which will contain the names of—
 - (i) mediators registered under this Act;
 - (ii) mediators whose registration has been cancelled;
- (c) permit the Mediation Board to make public the names recorded in the register in accordance with paragraph (b) above;
- (d) require compliance by mediators registered with it, the Code of Ethics and with any additional standards set by its own code of ethical and professional conduct;
- (e) shall have a satisfactory mechanism in place for addressing consumer complaints;
- (f) undertake to provide opportunities for practical experience for persons who may wish to obtain practical experience necessary for registration as a certified mediator.

11. Any fees charged by the agency shall be reasonable and Fees made known to parties prior to mediation.

12. The agency shall undertake to notify the Mediation Board of Changes to any changes to its rules or policy, which may alter the basis on which rules as policies its approval was granted.

Passed in the Senate this 16th day of December, 2003.

N. JAGGASSAR
Acting Clerk of the Senate

Passed in the House of Representatives this 16th day of January, 2004.

D. DOLLY
Acting Clerk of the House

House of Representatives amendments agreed to by the Senate this 10th day of February, 2004.

N. JAGGASSAR
Acting Clerk of the Senate