

FAMILY MEDIATION CANADA (FMC)

PRACTICE, CERTIFICATION AND TRAINING STANDARDS

**FAMILY MEDIATION CANADA
(FMC)**

**PRACTICE, CERTIFICATION AND
TRAINING STANDARDS**

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A. Preamble

These practice guidelines and the process for certification are the result of Family Mediation Canada's (FMC's) continuing consultation and collaboration with provincial, territorial and international mediation associations, researchers and practitioners¹ to establish uniform standards for family mediators that will apply across Canada. As a leader in the field of family mediation, FMC continually makes changes to this document to reflect the growth in the field of family mediation. This document reflects the energy and development of family mediation in Canada and it is written to manifest the culture and values of Family Mediation Canada. Modifications to this document, do not apply retroactively *unless specifically stated otherwise*. They take effect from the date they are passed by the Board of Directors. Applications for certification are governed by the provisions in force on the date FMC receives the application for certification.

Family Mediation Canada is an interdisciplinary association of mediators, lawyers, social workers, teachers, judges, human services and health care professionals, working together to create co-operative conflict resolution processes in cases of inter-personal, inter-generational, inter-group family and family law conflict. FMC was established in 1985 as a charitable, not-for-profit association under the Canada Corporations Act.

B. Our Vision

Excellence in family mediation.

C. Our Mission

Family Mediation Canada is dedicated to the promotion of mediation to respond to family-related conflict. FMC supports the ongoing development of excellence and professionalism within its organization and in mediation practice.

D. Our Objectives

¹ These *Standards of Practice and Certification* are a modified version of *Practice, Training and Certification Standards* developed, originally, by Peggy English and Dr. Linda Neilson, following three years of cross country consultation with mediators, lawyers, judges and educators. For particulars, see: Neilson, L. and English, P. (2001) "The Role of Interest-Based Facilitation in Designing Accreditation Standards: The Canadian Experience" *Mediation Quarterly* 18(3): 221-248. New provisions on spousal or partner abuse reflect current research on abuse and mediation. See, for example, L. Neilson et. al. (2001) *Spousal Abuse, Children and the Legal System Final Report for Canadian Bar Association Law for the Futures Fund* (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research, March 2001) posted on the internet at: http://www.unb.ca/arts/CFVR/spousal_abuse.pdf for discussion and a selected bibliography. As research in this area continues to grow and evolve, further modification of these Standards will be necessary.

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1. Provide a Canadian forum for the exchange of ideas, experiences, research, and opportunities relating to all aspects of family mediation through newsletters, conferences and seminars;
2. Promote and monitor a code of ethics and standards of practice;
3. Develop and encourage training and continuing education programs;
4. Encourage and conduct research into all areas of family dispute resolution;
5. Provide consultation to Provincial/Territorial mediation associations and other interested agencies, groups and individuals; and
6. Inform the Canadian public about the advantages of mediation.

E. The Guiding Principles:

The following principles will guide the directors and members of FMC in their activities and interactions:

1. *Respect* - conducting relationships with integrity in a respectful and fair manner;
2. *Responsibility* - maintaining viability and accountability;
3. *Democracy* - promoting full, equal, respectful multi-cultural,² human participation;
4. *Collaboration* - approaching tasks collaboratively, within FMC and in working with others;
5. *Quality* - providing helpful, effective, accessible services, consistent with FMC's Mission; and
6. *Timeliness* - working in an efficient and timely manner.

1. DEFINITIONS AND EXPLANATIONS

1.1 Categories of FMC Certified Family Mediator

The three categories of FMC mediator are defined as follows:

- a) A FMC Certified *Family Relations Mediator* is a family mediator who is a member of FMC and who:
 - i) meets all FMC standards and guidelines for a family relations mediator;
 - ii) agrees to adhere and does adhere to FMC Code of Professional Conduct ethical and practice standards;
 - iii) obtains and currently holds a “FMC Certified Family Relations Mediator” designation from a Provincial/Territorial or Provincially/

² Culture (including gender, socio-economic class, occupation, ethnicity, sexual orientation, religion, nationality, age, disability, geographic region) affects the lens through which all individuals understand and interpret conflict, conflict resolution processes and justice. FMC is committed to the promotion of cultural understanding and voice in all conflict resolution processes.

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- Territorially-designated and FMC-approved Certifying Panel or from a FMC Certifying Panel; and
- iv) limits his or her family mediation practice to child, relationship and child support issues and excludes disputes over the entitlement, ownership, division or control of property, inheritance, businesses, corporations, trusts or debts (except when the mediation of such disputes is incidental to child support issues or when co-mediating with a financial family mediator or a comprehensive family mediator). Mediators employed by Canadian governments who work primarily as Family Relations Mediators but who are also required, by the terms of their employment, to provide comprehensive mediation services in uncomplicated cases, may practice with this designation if the mediation is only undertaken with legal advice being made available to the clients,
- b) A FMC Certified *Financial Family Mediator* is a family mediator who is a member of FMC and who:
- i) meets all FMC standards and guidelines for a Financial Family mediator;
 - ii) agrees to adhere and does adhere to the FMC ethical and practice guidelines;
 - iii) obtains and currently holds a “FMC Certified Financial Family Mediator” designation from a Provincial/Territorial or Provincially/Territorially-designated and FMC-approved Certifying Panel or from a FMC Certifying Panel; and
 - iv) limits his or her family mediation practice to helping people resolve family conflicts about the entitlement, ownership, division or control of finances, property, inheritances, businesses, corporations, trusts or debts. (The financial and property mediator does not, except when co-mediating with a family-relations mediator, mediate conflicts about access, custody or adoption of children unless such issues are collateral, not complicated, do not involve appreciable disagreement and do not require mental health expertise.)
- c) A FMC Certified *Comprehensive Family Mediator* is a family mediator who is a member of FMC and who:
- i) meets all FMC standards and guidelines for a comprehensive mediator;
 - ii) agrees to adhere and does adhere to FMC ethical and practice guidelines;
 - iii) obtains and currently holds a “FMC Certified Comprehensive Family Mediator” designation from a Provincial/Territorial, or

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Provincially/Territorially-designated and FMC-approved Certifying Panel, or from a FMC Certifying Panel; and

- iv) includes in his or her family mediation practice mediation of child, relationship, financial and property issues.

- 1.2 *Abuse*³ means a pattern of behaviour or conduct in an intimate relationship that is associated with the unacceptable exercise of power and control, and adversely affects the ability of one or more participants to make free and informed decisions. Abuse may be physical, financial, emotional, psychological or sexual.
- 1.3 *Caucus* means a separate session or meeting held at the beginning of or during the mediation process, in which the mediator meets with fewer than all participants.
- 1.4 *Confidential / confidentiality* refers to the requirement that communications and documents prepared during or for the mediation are not disclosed as part of a formal dispute resolution process such as court or arbitration proceedings. Documents produced during mediation that are normally required to be produced during litigation (independent of mediation) are not confidential.
- 1.5 *Culture* means the values, norms, behaviours and symbols and self identify shared by a group of people. Ethnicity, gender, age, socio-economic status, national origin, religion, immigration status, sexual orientation, disability, physical appearance, occupation or profession, geographic setting and unique family norms all help to shape our cultural identities and understandings.
- 1.6 *Cultural Training* promotes awareness and acceptance of, and respect for: cultural values, beliefs, including the “dynamics of difference and similarity” in world view and in inter-personal interaction that may exist between the mediator and the mediation participants or between the participants themselves. Such training also promotes an understanding of how these dynamics affect the mediation process. Mediators have a duty to ascertain the meaning of culture for mediation participants and shall work with the participants to amend the conflict-resolution process so that it is sensitive to and respectful of the participants' understanding of culture and

³ The term ‘partner abuse’ maybe used instead of the term ‘spousal abuse’ to reflect today’s social realities. Partner abuse may involve participants who are married to each other or not married to each other, who are gay and lesbian or who are involved in an intimate relationship, but have never cohabited.

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approaches to conflict while remaining within the FMC Code of Professional Conduct.

- 1.7 *Family mediation* is a facilitative, non-adversarial conflict-resolution process in which one or more family mediators intervene in family issues in order to help the family develop and design its own solutions to issues; and to help the family change its communication and negotiation styles from adversarial and confrontational to co-operative and integrative. Family mediation includes, but is not limited to discussions about:
- a) pre-nuptial issues;
 - b) the reorganization of the family after separation and divorce;
 - c) future parenting plans for children (including living arrangements, time with the children, and decision making);
 - d) financial support and property matters connected to separation or divorce
 - e) child protection matters;
 - f) family business matters;
 - g) the division of responsibility for the care of elderly parents;
 - h) dementia care;
 - i) parental conflict with or about children;
 - j) family finances;
 - k) estate matters;
 - l) adoption; and
 - m) educational matters.

The assumption is that family mediation is a confidential (closed) process unless all participants agree to open mediation as defined below.

- 1.7 *Family mediator* means an impartial third person who possesses expertise in non-adversarial conflict and dispute-resolution processes and techniques and who assists in the management, control and resolution of inter-personal conflicts through family mediation.
- 1.8 *FMC certified family mediator* is an individual who satisfies the requirements set out in section 1, categories (1.1.a), (1.1.b) or (1.1.c).
- 1.9 *Interests* are of three broad types: substantive (tangible result), procedural (for example fairness and the opportunity to be heard and understood), and psychological (for example, having hopes, fears and concerns met during the mediation process).
- 1.10 *Mediation trainer* is an individual who, either alone or as a member of a group, company or association, provides mediation training to members of the public. It does not include someone who offers an occasional lecture,

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- role play, or specialized workshop within a mediation training program under the direction or supervision of one or more mediation trainers.
- 1.11 *Open mediation* is a process that may result in the mediator preparing a report outlining the areas of agreement reached during the mediation. The mediator's report will not include any recommendations or opinions, or commentary on behaviours or abilities. Mediation processes are presumed to be confidential and closed unless all participants have agreed to open mediation and the terms thereof are explicitly in writing or a court has ordered open mediation.
- 1.12 *Participants* in mediation are the persons engaged in a dialogue or dispute.
- 1.13 *Practicum supervisor* is an experienced family mediator who provides an organized supervision of mediation experience (outlined in 5.7 below) to a person learning how to apply the knowledge, skills and techniques of mediation in a mediation process.⁴
- 1.14 *Shuttle Negotiation* is a separate settlement process that does not involve face-to-face negotiation between or among the participants.

2. PRACTICE GUIDELINES FOR FMC FAMILY MEDIATORS

Family mediators shall work with the participants to establish and maintain a mediation process that will:

- 2.1 Be client centered;
- 2.2 Facilitate the participants' involvement in the mediation while taking into consideration their respective:
- a) Abilities to negotiate that may be affected by:
 - i) cultural practices and perspectives on direct face-to-face communications about conflict;
 - ii) education and experience;
 - iii) emotional vulnerability;
 - iv) concerns about safety of one's self, one's partner or former partner and, or one's children;
 - v) age and maturity;

⁴ Note: In 2002 mediators are continuing to report difficulties finding supervised practicum placements. Although not a requirement now, it is anticipated that the FMC may, in the future, require that all practicum supervisors be certified.)

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- vi) mental health;
 - vii) disability; and
 - viii)resources (financial and emotional);
 - b) Abilities to make decisions in accordance with their own interests while keeping in mind and prioritizing the best interests of their children;
 - c) Power to influence family decision-making;
 - d) Psychological, emotional and economic states;
 - e) Access to and understanding of relevant information; and
 - f) Access to appropriate support services such as independent legal advice.
- 2.3 Ensure that the participants have adequate time to fully discuss, consider and resolve their disputes and conflicts;
- 2.4 Ensure, prior to beginning the mediation process, that each potential participant is assessed separately, in secure surroundings, for a history of abuse and for the appropriateness of mediation. Pre mediation assessments of each participant must be conducted separately, preferably on a different day from assessments of other participants. It should be assumed that face-to-face mediation is inappropriate in cases involving past patterns of abuse. When mediation and shuttle negotiation (sometimes referred to as conciliation) are found to be inappropriate, participants are to be referred to other services if necessary,⁵

⁵ When abuse is understood only in terms of action and intention, a controlled negotiation process between the partners with a third party present, appears relatively safe. If abuse is understood in terms of intentional action, mediators have merely to ensure that abusive people are prevented from acting abusively towards partners (in or outside the sessions) during the mediation process. Yet mediators who have more complete understandings of abuse, who understand abuse in terms of context and result or consequence as well as action, appreciate that the situation is more complicated. Thus the mediator must do more than ensure a lack of abusive actions during or between sessions. The mediator must also ascertain: whether the victim's fears and apprehensions about safety and well-being will affect his or her ability to participate fully; whether such fears or apprehensions can be addressed while mediation is being conducted; whether abuse, that occurred in the past, has affected the abused person's ability to communicate and negotiate with the former partner on an equal footing; whether the abused person's ability to obtain, assess and analyze information pertinent to the matters being discussed has been affected; and whether the abused person's ability to withstand settlement pressures and delays have been affected. Survivors of abuse become hyper-vigilant to indicators of danger. Thus, what may appear to an untrained observer to be ordinary behavior on the part of one participant during a mediation session may provoke intense fears and anxiety in survivors of abuse. Effective negotiation is difficult, if not impossible, in the face of high levels of fear or anxiety. Once abuse is understood in context, it becomes clear that it is not only continuing abuse but also, the consequences and results of past abuse that affect mediation. (from: Report of the Spousal Abuse, Child Custody and Access Research Team (2001) to the Canadian Bar Association, Law for the Futures Fund – contact Linda Neilson.) These are some of the reasons that Family Mediation Canada promotes specialized training and screening for abuse and

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- 2.5 Ensure that culturally appropriate forms of dispute resolution are included;
- 2.6 Ensure that the interests of all persons in the dispute or conflict are considered;
- 2.7 Ensure confidentiality of the process is discussed and maintained except when:
 - a) the mediator suspects that a child is in need of protection;
 - b) the mediator has a duty, under provincial or federal legislation, to report that a vulnerable person is in need of protection;
 - c) the mediator determines there is a need to inform a potential victim and the police about an imminent danger;
 - d) there is a mutual agreement that the information may be released, as in an open mediation;
 - e) the mediator must breach confidentiality in order to comply with a duty to disclose the whereabouts of a child in cases of abduction; or
 - e) a judge orders disclosure.
- 2.8 Use language which is meaningful and appropriate to the participants;
- 2.9 Be fair to all participants;
- 2.10 Ensure that the special interests of children are recognized and considered by parents when they are making decisions about their children.
- 2.11 Assist participants to resolve family problems in a way that respects each family's interests, values, and rights to self-determination, while also respecting the interests and rights of others who may be affected;
- 2.12 Be sensitive to the participants' cultural perceptions, needs and understandings of fairness;
- 2.13 Be sensitive to the vulnerabilities of survivors of abuse and take special care to ensure that any agreements reached in a case involving a past pattern of abuse is a product of genuine agreement and not merely the product of vulnerability or need (financial, emotional) to settle the case;
- 2.14 Ensure that agreements reached in cases involving past patterns of abuse in the family give first priority to the safety of all family members, and second priority to the psychological health of primary caregivers and their children.

recommends a presumption against face-to-face mediation in abuse cases.

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Maximum contact is a factor only when consistent with the first and second priorities set out above;

- 2.15 Ensure that all legally relevant information has been disclosed so that the participants are making informed decisions;
- 2.16 Ensure that agreements reached in mediation reflect the range of outcomes considered acceptable in law and if the participants wish to enter an agreement falling outside that acceptable in law, strongly encourage the participants to obtain independent legal advice and reflect for a period of time before concluding any agreement; and
- 2.17. Attempt to ensure that no one suffers physical or emotional abuse or harm as a result of participating in mediation.

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3. THE TASKS OF A FMC FAMILY MEDIATOR

3.1 Pre-Mediation Tasks

The mediator should engage in the pre-mediation tasks set out below:

- a) Receive and read the case file and information for intake when appropriate;
- b) Encourage and, in appropriate circumstances, require participants to obtain independent legal advice prior to or at the beginning of the mediation process;
- c) Prior to beginning the mediation process, *assess*, in secure surroundings and in individual interviews, for the appropriateness of mediation. Check to ensure that:
 - i) there is/has been no abuse, or that the abuse that occurred in the past will not affect mediation negatively;⁶
 - ii) cultural factors are not inhibiting disclosure of abuse;
 - iii) the mediator will be able to comply fully with FMC's Code of Professional Conduct;⁷
 - iv) the mediator has put in place all safety measures that may be required for the protection of the participants, the mediator, and mediation staff;
 - v) the physical, psychological health and welfare of participants can be protected
 - vi) imbalances in power or in the negotiating abilities of the participants can be managed by the mediator in a way that ensures the full and equitable participation of all participants; and
 - vii) the mediator has the education, training and expertise required to mediate the conflict;⁸
- d) Refer cases to other services if the mediator is unable to ensure that:
 - i) there is/has been no abuse, or the abuse that occurred in the past will not affect any participant's ultimate ability to assess his or her own needs information or options;

⁶ See previous footnote.

⁷ Check FMC Code of Professional Conduct at <http://www.fmc.ca>

⁸ Mediators handling cases in shuttle negotiation processes involving partner abuse require specialized education and training on family abuse matters.

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- ii) each participant is able to negotiate without fear or apprehension about safety and well-being;
 - iii) each participant is able to withstand settlement pressure;
 - iv) if there has been past abuse, the participants have undergone counselling or treatment and abuse is not continuing;
 - v) participants are there willingly;
 - vi) both participants understand they are free to withdraw at any time;
 - vii) the mediator can comply fully with FMC's Code of Professional Conduct;
 - viii) the mediator can put into place all safety measures that may be required for the protection of the mediator, mediation staff and all participants;
 - ix) the physical and psychological health and welfare of the participants and their children can be protected;
 - x) imbalances in power or in the negotiating abilities of the participants can be managed by the mediator in a way that ensures the full and fair participation of all participants; and
 - xi) the mediator has the education, training and expertise required to mediate the conflict.
- e) If the mediation is inappropriate, make referrals to other services and end mediation safely;
- f) Assess for participants' readiness to mediate and, in particular, ensure that, for the foreseeable future, reconciliation is not possible and refer the participants to reconciliation or marital counseling when appropriate;
- h) Review the mediation process and the parameters of confidentiality with the participants and reach an agreement with the participants regarding rules for sharing and withholding of information divulged separately by each participant to the mediator in caucus or otherwise;
- j) Ensure the participants understand that complete and honest disclosure is required;
- k) Disclose any mediator preferences for particular types of outcomes and any conflicts of interest;
- l) Help the participants identify all those interested in or affected by the conflict;

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- m) Be sensitive to cultural matters that may affect the mediation process and help the participants develop a dispute resolution process that is sensitive to culture. Mediators may withdraw from mediation when participants' cultural values are in conflict with a mediator's personal values; and must withdraw when the participants' cultural values are in conflict with the Code(s) of Professional Conduct (either FMC or the Code from their original profession); and
- n) Sign a written "Agreement to Mediate" or a "Mediation Services Contract."

3.2 Special Provisions In Abuse Cases

Assessing for abuse and the appropriateness of mediation must continue throughout the mediation process.

- a) In addition to matters pertaining to screening discussed earlier, mediators must safeguard the information kept in files to ensure confidentiality and safety and only release such information in compliance with the provincial statutes governing freedom of information or requirements of a court order. Mediators shall take steps to ensure that information about dates, times, locations of abuse assessments, residential addresses and telephone numbers are not disclosed, without consent, to other family members or participants in cases involving abuse. In the absence of specialized family abuse training, the mediator should refer the case to another professional, with expertise in abuse matters, for intake screening assessment to determine whether abuse has affected a participant's ability to participate effectively in mediation or in shuttle negotiation.
- b) When in doubt, the proper course of action is always to assume that face-to-face, facilitated mediation will be inappropriate in cases involving past or present abuse and to err on the side of caution. Alternatives to mediation, such as shuttle negotiation may be offered in serious abuse cases only by practitioners who have specialized education and training in the domestic violence field.
- c) Assessing for abuse and the appropriateness of mediation must be continued throughout the mediation process.
- d) Mediation should end when:
 - i) a participant indicates that s/he feels intimidated by the other participant during mediation or between mediation sessions;

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- ii) one participant is using mediation or shuttle negotiation to maintain contact, to harass, control, intimidate or to delay legal proceedings;
 - iii) maintaining the balance of power becomes difficult or impossible; and/or
 - iv) abuse and or intimidation continue outside of the mediation or shuttle negotiation setting.
- e) The mediator's first priority is to ensure the safety of all participants and their children.⁹
- f) Mediation of the issue of abuse is never appropriate.
- g) Mediators should inform all participants that mediators are not neutral in issues of abuse or safety and have a legislative duty to report past and present child abuse, (if relevant that a vulnerable person is in need of protection under provincial or federal legislation) and threats of future abuse or harm.
- h) Mediators have a duty to step out of a neutral role and to act to protect the vulnerable if a formerly abusive partner engages in intimidation or abuse during a mediation or shuttle negotiation process. Usually such behaviors will result in ending the mediation or shuttle negotiation and referral to a service or process that offers additional protection.
- i) The mediator and the mediator's staff should take precautions not to reveal information about whereabouts, telephone numbers, or travel plans of either participant to the other without express prior knowledge and consent of the participant, preferably in writing.
- j) The mediator must take special care to ensure that any agreements reached in a case involving abuse are products of genuine agreement and not merely the product of vulnerability (financial or psychological) and when there are parenting issues, that the agreement gives first priority to the safety of all family members, second priority to the physical and psychological health of all family members and only after those concerns are addressed priority to contact with a previously abusive parent.

⁹ Safety and mental health have priority over the maximum contact principle.

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- k) When a thorough assessment has determined that previous abuse has not affected anyone's ability to participate fully and effectively in mediation or shuttle negotiation, and there is no continuing (psychological, emotional, physical, or sexual) danger, a mediator, with specialized education and training in abuse matters, may decide to proceed with either an adapted version of mediation or with a shuttle negotiation process. In such cases, the mediator or shuttle negotiator should consider special rules and procedures such as the following:
 - i) separate waiting areas, arrival and departure times;
 - ii) separate meetings throughout in a shuttle negotiation process unless the vulnerable participant requests a joint session, the abuser has acknowledged responsibility and received help and the specialized mediator believes that a joint session would be not only safe but also beneficial to the vulnerable participant;
 - iii) co-mediation with a mediator of another gender and or discipline, at least one of whom has specialized expertise in family violence and abuse matters;
 - iv) inclusion of support persons (friend, relative, therapist, lawyer or other) in waiting rooms, during screening assessment and/or in mediation or shuttle negotiation sessions; and/or
 - v) use of temporary agreements with follow up calls and sessions to monitor and assess the need to modify agreements for the welfare of the children, or for the health and safety of any family member.

- l) Mediation should be brought to a close if there is intimidation, abuse, harassment, use of the sessions to maintain control or to delay proceedings, or if maintaining the balance of power becomes difficult or impossible. Participants, in these cases, should be referred immediately to appropriate alternatives such as lawyers, police, shelters, advocates, or therapists.

3.3 Core Family Mediation Tasks

Set out below are the core tasks of the family mediator undertaking mediation:

- a) Establish an empathic, effective working relationship with the participants, and in particular:
 - i) maintain impartiality and objectivity unless impartiality and objectivity are culturally inappropriate;
 - ii) build rapport and trust through demonstrating an understanding of the participants;

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- iii) enhance the quality of the participants' communication with and understanding of each other and, when culturally appropriate, of their community;¹⁰
 - iv) set a cooperative tone;
 - v) promote each participant's understanding of the conflict by facilitating insight into and empathy for the views and personal situations of the other(s);
 - vi) encourage and support self-empowerment and self-determination of the participants individually or collectively as culturally appropriate;
 - vii) if appropriate, modify the mediation process to reflect the conflict resolution methods of the disputants' culture;
 - viii) manage the emotional climate (particularly feelings associated with the experience of separation and divorce for adults and children);¹¹
 - ix) encourage the participants throughout the process;
 - x) refocus the participants on the needs of the children where applicable;
 - xi) manage power imbalances throughout the process;
 - xii) create an environment of mutual exploration that is culturally appropriate;
 - xiii) speak so participants can understand and assist the participants to do likewise;
 - xiv) identify the participants' values;
 - xv) facilitate and model active listening unless such behavior is culturally inappropriate for the participants at the mediation;
 - xvi) collect and organize information from the participants;
 - xvii) consult the participants about the selection and use of neutral interpreters when necessary;
 - xviii) continually assess for abuse and maintain safety; and
 - xix) end the mediation if anyone's safety cannot be assured.
- b) Facilitate the participants' negotiations and resolutions, in particular:
- i) ensure that the participants understand and are satisfied with the structure and form of the conflict resolution process;
 - ii) guide the participants through the mediation process;
 - iii) assess and work with the participants to make appropriate process changes and negotiate changes in procedure with the participants. Process changes include matters such as: bringing

¹⁰ In some cultural settings, promoting collective understanding may be more appropriate than attempting to enhance direct communication between individual participants.

¹¹ Comfort with emotional disclosure and expression varies by culture.

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- in partisan support for participants having difficulty dealing with power or negotiation imbalances, including experts in mediation for information purposes, including children or stepparents or extended family members; employing individual or group caucuses; referring participants to other professionals or procedures for information or support;
- iv) facilitate the full disclosure of all information relevant to the issues;
 - v) unless culturally inappropriate, maintain a productive present and future focus;¹²
 - vi) when dealing with separating or divorcing families, seek information from the participants about the impact and meaning of separation and divorce in their family, pay attention to cultural issues, particularly those that may affect either participant's social isolation or cultural ostracism as a result of divorce.
 - vii) when appropriate, provide information to the participants about the impact and effect of separation and divorce on parents and children;
 - viii) when mediating with participants from other cultures, seek information from a person with expertise or from other written resources about the impact and effect of separation and divorce on parents and children within the disputants' culture;
 - ix) when using an interest-based model of mediation, guide the participants' discussions from positions to interests;
 - x) help the participants develop options and evaluate their feasibility;
 - xi) ensure the participants understand the options available to them if agreement is not reached;
 - xii) ensure the participants measure solutions against their own criteria of fairness, taking into consideration the interests of all affected others;
 - xiii) work with the participants to enable them to implement any decision or agreement;
 - xiv) draft a concluding document
 - xv) encourage participants to seek legal advice before formalizing any agreements;
 - xvi) make referrals, when appropriate, to specialists, other services and other sources of information;

¹² Focus on the past only when it is helpful to participants in their efforts to resolve the conflict. Linear problem solving and discussion is not always culturally appropriate. Participants from some cultures may prefer more circular, less time oriented discussion.

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- xvii) determine when, if and how the mediator must withdraw from mediation;
- xviii) assist the participants to create a plan (such as returning to mediation at a later date or utilizing other dispute resolution processes) to resolve or reassess issues which have not been settled in mediation; and
- xix) adhere to FMC's Code of Professional Conduct.¹³

4. KNOWLEDGE, SKILLS, ABILITIES AND OTHER ATTRIBUTES REQUIRED OF CERTIFIED FAMILY MEDIATORS AND SUGGESTED FOR ALL PRACTISING FAMILY MEDIATORS.

To obtain any of the FMC Family Mediator Certifications, the applicant must be able to demonstrate:

- the appropriate skills and the ability (set out in sections 4.2, 4.3, 4.4, 4.5, 4.6) to perform the mediation tasks as set out in sections 2 and 3 above;
- the knowledge set out in section 4.1 below; and
- personal qualities (listed in 4.7).

4.1 Literature, research, skills and techniques

All Certified Family Mediators must and all practicing members of FMC should be able to demonstrate knowledge of the literature, research, skills and techniques associated with the following:

- a) Negotiation, conciliation, conflict management and mediation theory and methodology;
- b) Family dynamics;
- c) Assessing for appropriateness for mediation;
- d) Legal information pertaining to the issues being mediated;
- e) The economic realities of separation and divorce;
- f) The effects of separation and divorce on parents, children and extended families;
- g) The dynamics and effects of abuse, coercion and control in families;
- h) Professional, academic, community and educational resources for referral or use within the mediation process;

¹³ Click on <http://www.fmc.ca/code.htm> for FMC's Code of Professional Conduct

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- i) The implications of gender in mediation, particularly in terms of power imbalances and family dynamics, participant negotiating styles and mediator - participant interaction;
- j) The implications and meaning of culture for the mediation participants, with particular attention to issues such as:
 - i) social pressure on the participants to remain in the marital and family relationship
 - ii) the appropriateness of direct face to face expression, confrontation and disclosure;
 - iii) patterns of acceptable emotional expression;
 - iv) patterns of linear and non-linear expression and argument;
 - v) collectivist as opposed to individualistic understandings of fairness and justice
 - vi) culturally appropriate conflict resolution communication patterns and methodologies
 - vii) actual and perceived power imbalances produced by perceptions of cultural or socio-economic status and power;
 - viii) cultural misinterpretations between or among participants; and
 - ix) the potential for misinterpretations of verbal expression and body language by the mediator
- k) Public concerns regarding mediation practice;
- l) Other conflict resolution options;
- m) Ethical and moral issues in mediation;
- n) Identification of multicultural issues; and
- o) (If mediating child issues) the normal and abnormal growth and development patterns of children.

4.2 Communication skills

All Certified Family Mediators must and all practicing members of FMC should be able to demonstrate the ability to use and apply each of the following communication skills effectively, to assess the cultural relevance and appropriateness of each skill, and to choose from and apply only the skills appropriate to the particular mediation and to the particular participants:

- a) Listening and responding accurately and without judgment to feelings, thoughts and situations;
- b) Speaking in terms of interests, rather than in terms of positions;
- c) Reframing negative comments in neutral terms;
- d) Clarifying information and assumptions;
- e) Summarizing communications and consolidating areas of agreement;
- f) Questioning, when culturally appropriate, to elicit information, feelings, fears and perspectives;

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- g) Clarifying participant discrepancies, distortions or inconsistencies;
- h) Displaying empathy and understanding without personal partiality or bias;
- i) Discerning strongly held values and acting to “set aside one's own values and judgments and not substitute them for those of the parties” (Bush, 1993);
- j) Acknowledging the importance and validity of multiple participant perspectives;
- k) Giving constructive feedback;
- l) Working effectively with an interpreter;
- m) Demonstrating and promoting sensitivity to verbal and non-verbal behaviors;
- n) Speaking clearly, simply and effectively at the communication and comprehension level of the participants; and
- o) Regulating the pace and the flow of the communication in accordance with participant needs.

4.3 Relationship skills

All Certified Family Mediators must and all practicing members of FMC should be able to form, support and maintain effective relationships with the participants by:

- a) Creating rapport;
- b) Establishing trust;
- c) Demonstrating respect for the participants;
- d) Encouraging mutual respect among all participants;
- e) Being supportive and impartial; and
- f) Protecting and affirming the participants' right to self-determination.

4.4 Content management skills

All FMC Certified Family Mediators shall (and all practicing mediators should) be able to:

- a) Obtain, identify, organize, analyze, prioritize and evaluate information;
- b) Assess the issues and options and reason logically;
- c) Read, comprehend and use relevant written materials;
- d) Write clearly and concisely, using neutral language;
- e) Organize records and materials;
- f) Elicit information from other professionals (such as appraisers, actuaries, accountants, mental health professionals, child protection professionals, lawyers) in the mediation process;
- g) Use and exchange information so that it broadens rather than limits the participants' options; and

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- h) Elicit from participants, the meaning for them of their own culture in the context of the particular dispute.

4.5 Process skills

All FMC Certified Family Mediators are required (and all practitioners are expected) to be able to demonstrate the following skills:

- a) Assist the clients in negotiating the process and setting the ground rules and agenda for mediation sessions;
- b) Evaluate self, participants and the process;
- c) Ascertain whether s/he (the mediator) is qualified in terms of culture and substantive knowledge to mediate the issues in dispute;
- d) Help participants to explore interests, values and narratives or perspectives;
- e) Acknowledge and manage power imbalance;
- f) Assist the participants in converting positions into interests;
- g) Caucus appropriately;
- h) Use effective co-mediation or conciliation skills;
- i) Assist participants to adhere to the agreed agenda and/or to renegotiate the agenda;
- j) Manage high levels of conflict by knowing how and when it is culturally and personally appropriate to:
 - i) allow or control emotional ventilation;
 - ii) focus the attention of the participants on the future rather than the past
 - iii) focus participant attention on the problem, not on the people; and
 - iv) defuse participant tension and distress;
- k) Control the process without overriding the participants' self determination;
- l) Manage crises;
- m) Help participants to alter their negotiation styles from adversarial and confrontational to integrative and cooperative;
- n) Help participants understand the best and worst alternatives to a mediated settlement;
- o) Help participants to overcome impasses;
- p) Use encouragement to guide the participants through the mediation process;
- q) Assist participants in working with other professionals/experts in the mediation as required;
- r) Assist participants to understand the consequences of their plans;
- s) Assist participants with option-building (techniques such as:
 - i) broadening the number or scope of options;
 - ii) building new solutions by integrating the interests of all participants;
 - iii) trading concessions of lesser importance for concessions of greater importance;
 - iv) bridging the positions and interests of the participants; and

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t) End the mediation effectively and safely.

4.6. Ability

“The innate personal quality to manage effectively complex human interactions.”
(Christopher Honeyman 1994)¹⁴

This is the subjective part of mediation. It is the mediator's personal presence, status, acceptance, spiritual sense, etc. It is tangible and palpable but not fully measurable. These are the building blocks of the superlative mediator, without which no amount of education, training, and practice will suffice.

4.7 Personal attributes

The following personal attributes or qualities are associated with successful family mediators:

- a) A non-directive, non-judgmental nature that respects individual autonomy;
- b) Personal warmth, an empathetic nature and a genuine liking of people;
- c) An ability to be firm and assertive when needed to control the mediation process, without the need to control the outcome or the participants;
- d) An ability to separate the professional from the personal while retaining professional warmth, empathy and objectivity and keeping personal feelings and experiences in abeyance;
- e) Self awareness, including an awareness of one's own inter-personal communication style, its effect on others, and one's own culture, values and biases;
- f) Flexibility, both cognitive and behavioural, a lack of rigidity, an ability to adapt readily to unexpected changes;
- g) Experience with the diversity of life and acceptance of differences;
- h) Interpersonal understanding and intelligence;
- i) An ability to remain calm, level-headed and caring in the face of hostility, adversity and tension;
- j) Well-developed lateral thinking and problem-solving skills and the ability to be clear, creative and imaginative;
- k) An inherent ability to demystify and simplify human problems;

¹⁴ “No matter how much we try to develop 'scientific' standards, it is difficult to qualify or even specify sometimes that 'je ne sais quoi' that is the 'art' of mediation, a particularly tactful intervention, a serendipitous orchestration of possible solutions or communication patterns, a cheerful outlook that keeps the parties working (or the contrary slightly ominous presence that keeps the parties working).” (Menkel-Meadow)

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- l) Common sense;
- m) Intuition and perception;
- n) Comfort with ambivalence, the tension of uncertainty and ambiguity;
- o) Patience;
- p) A sense of humour;
- q) A willingness to learn by asking and listening;
- r) A sense of humility; and
- s) A responsible, ethical and honest nature.

5. TRAINING OF FMC FAMILY MEDIATORS

5.1 Pre-requisites

While no formal degree is required as a prerequisite to mediation training a university degree or appropriate work experience and the Personal Attributes listed in section 4.7 are strongly recommended.

5.2 Explanatory comments

- a) The FMC certification process does not prevent anyone from practicing family mediation but does prevent family mediators who are not certified by FMC from claiming FMC certification.
- b) FMC encourages all potential family mediators who seek certification, to obtain mediation training from training programs that have clearly articulated learning objectives and that are evaluated highly by students.
- c) Applicants for certification may be able to count as related training under 5.3, 5.4 and 5.5, courses taken in professional training or taught at community colleges or universities, workshops, training institutes or conferences, if the courses or sessions specifically address the subjects listed. The 80 hours of conflict resolution and mediation training may be counted only if taken in a course or courses specific to mediation.
- d) Students learn how to apply the theory and skills taught in basic family mediation training when they are given an opportunity to mediate under the supervision and guidance of an experienced family mediator. Consequently, subject to the exceptions in sections 5.3 (3), 5.4 (3) and 5.5 (3), a supervised practicum will be required of all beginning family mediators seeking certification.

5.3 The minimum training for applicants seeking certification as a family relations mediator

The minimum training for applicants seeking certification as a *family relations mediator* are set out below:

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- a) At least **80 hours** of basic conflict resolution and mediation theory education and skills training, including at least 10 hours training on the cultural dynamics of conflict and conflict resolution processes; and
- b) At least **100 hours** of further related education and training including:
 - i) at least 35 hours of training on the family dynamics of separation and divorce including:
 - the psychological effects of separation and divorce on family members;
 - stages of the separation and divorce process;
 - appropriate parenting plans and arrangements by culture, age and maturity of the child; and
 - child development issues as those relate to the specifics of family re-organization and parenting plans in the context of culture;
 - ii) at least 14 hours relating to family and child law - custody, access, guardianship, support, child protection and abduction law (Canadian and International);
 - iii) at least 21 hours of training on abuse and control issues, including:
 - the dynamics and effects of abuse on all family members (including children);
 - indicators of danger in abuse cases;
 - child protection and child abduction matters associated with abuse cases, including how to assess the danger of child abduction and safety precautions that can be taken;
 - safety issues in mediation;
 - current understanding of best practices in the use of tools and techniques to detect and conduct contextual assessments of abuse;
 - cultural factors that affect disclosure and options in abuse cases;
 - criminal and civil procedures and protection orders (including strengths and limitations of) that may be of assistance to victims of abuse;
 - ethical rules and standards of practice for mediators in abuse cases;
 - processes and methods that can be used to provide additional protection to participants in mediation and shuttle negotiation processes;
 - special provisions for use in parenting plans in high conflict and abuse cases;

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- safety planning and safe referral techniques; and
 - sources of help for abused family members;
 - iv) at least 7 hours training on financial issues relating to separation, divorce and family reorganization;
 - v) at least 7 hours of training on ethical issues relating to the mediation process; and
 - vi) at least 7 hours on drafting memoranda of understanding;
- c) Completion of an approved mediation practicum in accordance with FMC standards as set out in section 5.7 below, or, for a period of ten years following the implementation of this certification process (until March 31, 2009), if the applicant has been a practicing family mediator, in lieu of completion of a practicum, the applicant must submit evidence of:
- i) completion of at least 10 fee-paid, private family mediations; or
 - ii) completion of 10 family mediations in a structured setting with a mediation organization acceptable to FMC; and in both alternatives (a) and (b)
 - iii) submit two positive evaluations from persons who have seen the applicant's work (co-mediators, supervisors, lawyers who have attended the family mediations or received direct feedback from their clients, or clients) during the past two years; and
- d) Twenty hours of continuing family mediation education each year; with at least 14 hours of conflict resolution or mediation skills training in the last three years.¹⁵ The fourteen hours must be skills-based refresher training as a student. The remaining 6 hours may include teaching and coaching, writing, reading, taking relevant courses, doing relevant volunteer work or attending relevant conferences.

5.4 The minimum training standards for applicants seeking certification as a financial family mediator

The minimum training standards for applicants seeking certification as a *financial family mediator* are set out below:

- a) At least **80 hours** of basic conflict resolution and mediation theory education and skills training, including at least 10 hours training on the cultural dynamics of conflict and conflict resolution processes; and
- b) At least **100 hours** of further related education and training including:

¹⁵ This requirement does not apply in the certifying year.

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- i) at least 14 hours of training on the family dynamics of separation and divorce including the psychological effects of separation and divorce on family members and the stages of the separation and divorce process;
- ii) at least 7 hours of child support law;
- iii) at least 21 hours of training on abuse and control issues, including:
 - the dynamics and effects of abuse on all family members (including children);
 - indicators of danger in abuse cases;
 - child protection and child abduction matters associated with abuse cases, including how to assess the danger of child abduction and safety precautions that can be taken ;
 - safety issues in mediation;
 - current understanding of best practices in the use of tools and techniques to detect and conduct contextual assessments of abuse;
 - cultural factors that affect disclosure and options in abuse cases;
 - criminal and civil procedures and protection orders (including strengths and limitations of) that may be of assistance to victims of abuse;
 - ethical rules and standards of practice for mediators in abuse cases;
 - processes and methods that can be used to provide additional protection to participants in mediation and shuttle negotiation processes;
 - special provisions for use in parenting plans in high conflict and abuse cases;
 - safety planning and safe referral techniques; and
 - sources of help for abused family members;
- iv) at least 42 hours training on legal and financial issues relating to separation, divorce and family reorganization giving a basic understanding of:
 - the law with respect to the division and allocation of the family's income and property on separation and divorce;
 - income tax law with respect to transfers of money and property between family and former family members;
 - a basic understanding of joint and several liability for family debts; company and partnership law;
 - appraisal and valuation methods and problems;
 - insurance, trust and inheritance law; and
 - disclosure requirements;

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- v) at least 7 hours of training on ethical issues relating to the mediation process; and
 - vi) at least 7 hours on drafting memoranda of understanding;
- c) Completion of an approved mediation practicum in accordance with FMC standards as set out in section 5.7 below, or, for a period of ten years following the implementation of this certification process (until March 31, 2009), if the applicant has been a practicing family mediator, in lieu of completion of a practicum, the applicant must submit evidence of:
- i) completion of at least 10 fee-paid, private family mediations; or
 - ii) completion of 10 family mediations in a structured setting with a mediation organization acceptable to FMC; and in both alternatives (a) and (b)
 - iii) submit two positive evaluations from persons who have seen the applicant's work (co-mediators, supervisors, lawyers who have attended the family mediations or received direct feedback from their clients, or clients) during the past two years; and
- d) Twenty hours of continuing family mediation education each year; with at least 14 hours of conflict resolution or mediation skills training in the last three years.¹⁶ The fourteen hours must be skills-based refresher training as a student. The remaining 6 hours may include teaching and coaching, writing, reading, taking relevant courses, doing relevant volunteer work or attending relevant conferences.

5.5 The minimum training for an applicant seeking certification as a comprehensive family mediator

The minimum training for an applicant seeking certification as a *comprehensive family mediator* are set out below.

- a) At least **80 hours** of basic conflict resolution and mediation theory education and skills training, including at least 10 hours training on the cultural dynamics of conflict and conflict resolution processes; and
- b) At least **150 hours** of further related education and training including:
 - i) at least 35 hours of training on the family dynamics of separation and divorce including:
 - psychological effects of separation and divorce on family members;

¹⁶ This requirement does not apply in the certifying year.

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- stages of the separation and divorce process;
 - appropriate parenting plans arrangements by culture, age and maturity of the child; and
 - child development issues as those relate to the specifics of family re-organization and parenting plans in the context of culture;
- ii) at least 21 hours relating to family and child law - custody, access, guardianship, support, child protection and abduction law (Canadian and International);
- iii) at least 21 hours of training on abuse and control issues, including:
- the dynamics and effects of abuse on all family members (including children);
 - indicators of danger in abuse cases;
 - child protection and child abduction matters associated with abuse cases, including how to assess the danger of child abduction and safety precautions that can be taken;
 - safety issues in mediation;
 - current understanding of best practices in the use of tools and techniques to detect and conduct contextual assessments of abuse;
 - cultural factors that affect disclosure and options in abuse cases;
 - criminal and civil procedures and protection orders (including strengths and limitations of) that may be of assistance to victims of abuse;
 - ethical rules and standards of practice for mediators in abuse cases;
 - processes and methods that can be used to provide additional protection to participants in mediation and shuttle negotiation processes;
 - special provisions for use in parenting plans in high conflict and abuse cases;
 - safety planning and safe referral techniques; and
 - sources of help for abused family members;
- iv) at least 42 hours training on legal and financial issues relating to separation, divorce and family reorganization giving a basic understanding of:
- the law with respect to the division and allocation of the family's income and property on separation and divorce;
 - income tax law with respect to transfers of money and property between family and former family members;
 - a basic understanding of joint and several liability for family debts; company and partnership law;

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- appraisal and valuation methods and problems;
 - insurance, trust and inheritance law;
 - disclosure requirements;
 - v) at least 7 hours of training on ethical issues relating to the mediation process;
 - vi) at least 7 hours on drafting memoranda of understanding; and
- c) Completion of an approved mediation practicum in accordance with FMC standards as set out in section 5.7 below, or, for a period of ten years following the implementation of this certification process (until March 31, 2009), if the applicant has been a practicing family mediator, in lieu of completion of a practicum, the applicant must submit evidence of:
- i) completion of at least 10 fee-paid, private family mediations; or
 - ii) completion of 10 family mediations in a structured setting with a mediation organization acceptable to FMC; and in both alternatives (a) and (b)
 - iii) submit two positive evaluations from persons who have seen the applicant's work (co-mediators, supervisors, lawyers who have attended the family mediations or received direct feedback from their clients, or clients) during the past two years; and
- d) Twenty hours of continuing family mediation education each year; with at least 14 hours of conflict resolution or mediation skills training in the last three years.¹⁷ The fourteen hours must be skills-based refresher training as a student. The remaining 6 hours may include teaching and coaching, writing, reading, taking relevant courses, doing relevant volunteer work or attending relevant conferences.

5.6 Family specialties

In order to mediate in specialized areas of practice, mediators must prepare themselves by acquiring appropriate specific knowledge and skills. For instance, in areas such as adoption mediation or child protection mediation, the mediator must be familiar with the appropriate legislation, court rulings, social and psychological literature, risk factors, assessment methods and professional procedures associated with that specialty. Dementia care is a growing concern among the senior population and can only be expected to rise as baby boomers age. There are more and more cases where people are mediating without doing any kind of assessment for dementia. An

¹⁷ This requirement does not apply in the certifying year.

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assessment tool for dementia is as needed as the assessment tool was for domestic violence. Mediators offering conflict resolution processes to members of other cultures have a duty to ensure that they have both the specialized education and training and the procedural skills necessary to do so. It is the responsibility of family mediators to prepare themselves appropriately and to not engage in mediations outside of their expertise.

5.7 Supervised practicum standards

- a) Subject to the exception in subsection (c) of sections 5.3, 5.4, and 5.5, applicants for certification should seek one or more practicum placements with one or more practicum supervisors as outlined in section 1 (12). Applicants for certification must complete a **30 hour** supervised practicum that includes:
 - i) Twenty hours of client-contact family mediation , with more than half of this time acting as the primary or sole mediator working under the supervision of an experienced mediation practicum supervisor ;
 - ii) Ten hours of consultation with the practicum supervisor about the family mediations done by the candidate that were directly observed by the supervisor;
 - iii) The opportunity to progress from observing experienced mediators in mediation sessions, to co-mediating with an experienced mediator, to sole mediating under supervision; and
- b) If the candidate is unable to locate a supervisor able to provide 20 hours of actual client mediation, then with the written approval of the FMC Certification Committee the candidate may include up to, but not more than 10 hours of simulated family mediation with either on site or video link supervision. Ten of the 30 hours of practicum experience may be counted from non-family mediation.
- c) At the end of each practicum, the student should have the practicum supervisor sign the FMC Supervised Practicum Report.

6. THE FMC FAMILY MEDIATOR CERTIFICATION PROCESS

- a) Nothing herein prevents Provincial or Territorial Associations, or other certifying bodies from establishing their own certification processes. This document applies only to FMC family mediator certification.

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b) The Certification Committee is a Committee of the Board of FMC. The members of the Certification Committee shall include the Executive Director, representatives from the Certifying Panel (the Certifying Administrator(s) and Certifying Assessors), a board member and up to two other certified mediators. The Chair of the Certification Committee will be elected from and by the committee members.

c) Objectives:

The objectives of the Certification Committee are:

- i) To act as an information and assistance resource to the Certifying Panel (Administrator and assessors) regarding policy decisions;
- ii) To monitor and update all the documents that support and govern the certification process;
- iii) To recommend policy decisions about the certification program to the Executive Committee of the Board;
- iv) To recommend changes to the Standards or Code of Professional Conduct to the Exec. Committee of the Board. These changes will then be addressed at an AGM of the Board; and
- v) To receive recommendations, along with the Board of Directors, from the Cert. Administrator regarding the endorsement of successful candidates for certification.

d) Goals and Priorities:

The goals and priorities of the Certification Committee are to:

- i) Update policies pertaining to certification and de-certification;
- ii) Update certification exams; and
- iii) Recognize certified mediators.

6.1 Affiliates

a) Each Provincial or Territorial Association which is an affiliate of FMC may create its own Certifying Panel (with a Provincial/Territorial Certifying Administrator and Provincial/Territorial Certifying Assessor) using the FMC Standards of Practice and the Process for Certification. FMC shall encourage mediators to apply to Provincial/Territorial associations for FMC certification, wherever Provincial/ Territorial certification bodies exist, but may certify (or refuse to certify) applicants at the national level in exceptional circumstances (such as when an applicant perceives a personal or professional conflict with members of a Provincial/Territorial certifying body).

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- b) Nothing prevents Provincial or Territorial Associations, or other certifying bodies from establishing their own certification processes. This document applies only to FMC family mediator certification.

6.2 Responsibilities of the Provincial/Territorial and National Certifying Administrator(s)

The certification process (either Provincially/Territorially or Nationally) will be managed by a Certifying Administrator(s) who shall:

- a) Work with the Executive Director of FMC and the Certification Committee of FMC;
- b) Work with the pool of qualified certifying assessor(s);
- c) Receive and process applications for certification in accordance with section 6.4 (1); and
- d) Maintain the certification records.

6.3 Suggested qualifications of a Certifying Administrator

A Certifying administrator shall have:

- a) Substantial experience in the family mediation qualifications and standards movement within the last five years immediately preceding his/her appointment;
- b) A working knowledge of ethical issues in mediation;
- c) Extensive experience in the training and substance of family mediation practice;
- d) Current FMC certification
- e) Demonstrated administrative skills and abilities including a proven ability to work in an impartial and timely manner;
- f) Good personnel management and organizational skills; and
- g) Good interpersonal communication skills.

6.4 Suggested qualifications of a Certifying Assessor

A Certifying assessor shall have:

- a) At least 100 hours of family mediation practice per year in the past five years;
- b) A least 20 hours of continuing education in mediation theory and skills taken or taught within the preceding year;

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- c) Current knowledge of theory and skills of mediation (i.e., through recent training, readings, conferences);
- d) A clear working familiarity with the knowledge and skills necessary to demonstrate competence in the area of family mediation;
- e) FMC certification as a family mediator;
- f) Successfully completed a training program for FMC certifying assessors; and
- g) Prior to undertaking training as an assessor, the affiliates and the board shall be given an opportunity to provide any pertinent information concerning the assessor candidate.

6.5 The certifying process¹⁸

- a) An applicant must submit an application to the Certifying Administrator including:
 - i) Evidence of completion of the appropriate minimum number of hours of mediation training and a FMC-approved practicum in accordance with the provisions of sections 5.3 (c), 5.4 (c), and 5.5 (c);
 - ii) A curriculum vitae outlining educational and professional qualifications and achievements;
 - iii) Three letters of reference discussing personal attributes on FMC-approved reference forms;
 - iv) Evidence of the required professional liability insurance coverage;¹⁹
 - v) An affidavit or solemn declaration verifying that the applicant is a member in good standing of FMC and will adhere to the Code of Standards and Code of Ethics of FMC and that the information provided on the application is true; and
- b) The Certifying Administrator may also request a written consent from the applicant allowing the panel to inquire about professional disciplinary actions involving the applicant if s/he has reason to believe that the applicant has been disciplined or disqualified on ethical grounds by any professional body or organization. Family Mediation Canada may refuse to certify an applicant who refuses to provide the consent, who has been disciplined on ethical grounds.
- c) An applicant who is unable to supply a consent will be given an opportunity to demonstrate that the absence of clearance or consent relates to a

¹⁸ All family mediators who wish to be certified by FMC will complete the certifying process. There is no “grand parenting.”

¹⁹ Insurance coverage should be at least \$1,000,000 aggregate. For more information click on <http://www.fmc.ca/liab.htm>

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conviction or disciplinary matter that is not relevant to professional and ethical issues associated with mediation practice. The Certifying Administrator may in such case approve the applicant.

- d) When the applicant has met the application requirements, the following will apply:
- i) The applicant must complete within one year the FMC performance-based skills assessment process by submitting a video presentation of a mediation (either simulated role play or live demonstration with clients who have signed a release). This includes a self-reflection exercise on the video completed which shall be submitted with the video;
 - ii) The assessor's written evaluation of the skills demonstration will be sent to the candidate;
 - iii) The candidate must achieve a minimum score on the performance-based assessment; and
 - iv) If the candidate did not meet the required performance level and two assessors have reviewed the tape, s/he must provide an interview (in person or by phone) with the assessors who viewed the skills based assessment in order to clarify portions of the demonstration or to receive encouragement or advice. The written feedback of the assessor's evaluation of the skills demonstration will be sent to the candidate. After payment of additional fees to cover a new assessment, an unsuccessful candidate may submit another videotape. Candidates must successfully complete the skills based assessment within one year of the application for certification. Following two unsuccessful demonstrations, the candidate may be required to take further training or complete a practicum before reapplying for certification. Confirmation from the supervisor and approval of the candidate's proposed practicum from the Certifying Administrator will be required prior to beginning a practicum.
- e) The skills bases and substantive knowledge assessments shall be recorded in an appropriate manner and shall be made available to applicants who are seeking to attempt to settle any disagreements about their certification. Following resolution of a disagreement, the assessment records are to be returned to the Certifying Administrator.
- f) Once the candidate has successfully passed the skills based assessment, the applicant will be required to successfully pass at the required level, a written test designed to assess his/her understanding of the applicable substantive knowledge set out in sections 5.3, 5.4 or 5.5.

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Candidates who are unable to complete a written test because of disability or a medical condition may be offered the option of an oral substantive knowledge test.

- g) At the end of the process, the assessors will send written evaluations of the skill-based assessment and substantive knowledge test (and a report outlining the interview if any) to the Certifying Administrator. The Certifying Administrator shall check to ensure that the candidate's application documents are in order and that the candidate has successfully completed all stages of the certification process. The Certifying Administrator shall then submit the candidate's name to the Certification Committee and to the Board of Directors of FMC for endorsement. If the Certifying Administrator does not receive any objections from the Board within 7 days of submitting the name of the Candidate, the Candidate shall be sent notification of successful completion of the certification process.
- h) The Board of Directors shall accept the certification recommendation of the certifying administrator unless:
 - i) there is evidence of bias in the assessment process or evidence that the assessment tools were not used appropriately (in accordance with standard FMC policies and procedures). In this case, the Board of Directors shall have the option of having the candidate assessed by another assessor, whose assessment, if the same as the first, shall be binding on the Board. If the second assessment differs from the first, the Board may rely on the second assessment; or
 - ii) If a member of the Certification Committee or Board of Directors has a "grave concern". A grave concern is defined as "a concern where the ethical conduct of the candidate or the quality of the work of the applicant is notoriously deficient to the point where a director or certification committee member, on the balance of probabilities, perceives that the certification of the candidate would impair the credibility of FMC or create a safety issue for clients." In such a case, the director or certification committee member may confidentially contact the Certifying Administrator to talk about his/her grave concern. If the grave concern is placed confidentially before the Certifying Administrator, he/she will interview the candidate and discuss the circumstances which gave rise to the grave concern. If there is no reason to deny certification, the Certifying Administrator will inform the person who had the grave concern and the certification will be granted. If the issues around the grave concern cause the Certifying Administrator to question

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the ethics or suitability for certification of the candidate, certification will be denied. To pursue certification further, the candidate must follow the appeal process below.

- i) Successful candidates will be notified of certification by the President of FMC and shall be entitled to receive a certification document. FMC will maintain a current list of names addresses and telephone numbers of FMC Certified Family Mediators. The list will be available to the general public
- j) In order to maintain and renew FMC certification, the certified family mediator shall:
 - i) maintain a yearly membership in FMC;
 - ii) complete the prescribed hours of continuing family mediation education each year with at least 14 hours of conflict resolution or mediation skills training in the last three years;
 - iii) complete at least 30 hours of family mediations per year averaged over the last five years; and
 - iv) maintain the prescribed amount of mediator liability insurance as set out on FMC website.²⁰
- k) Certified family mediators seeking to renew certification after five years, who have not been able to complete at least 30 hours of family mediations per year averaged over the last five years, (due to lack of available clients, for example) shall have the option of completing, upon payment of the costs of the assessment, a second performance-based assessment in lieu of completing the required hours of practice.
- l) Where a certified mediator has let his/her certification lapse by failing to pay the maintenance fee and the period of the lapse is less than one year, that person may be reinstated upon paying the annual membership fee, the certification maintenance fee and a processing fee of \$50 provided that the certified mediator has also complied with 6.5(j)(ii) and (iv).

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- m) Where a previously certified mediator has let their certification lapse and the period of the lapse is more than one year but less than five years, that person may be reinstated upon submitting a request to the certification committee explaining the lapse and reason for requesting reinstatement. Upon review by the certification committee to ensure there are no ethical concerns, the mediator may be reinstated provided that they:
- Complete 30 hours of mediation within the 12 months preceding the application for reinstatement;
 - Provide evidence of ongoing professional development in the field of mediation by demonstrating that at least 40 hours of mediation training has been undertaken within the past five years, 30 hours of which were completed within the 12 months preceding the application for reinstatement;
 - Provide proof of current liability insurance as prescribed by FMC; and
 - Pay the current annual membership fee, the current certification maintenance fee, plus a processing fee of \$100.00.
- n) The first 12 months certification maintenance fee after certification is included in the tuition for certification. The maintenance fee for the following year will be pro-rated and billing for the pro-rating will take place on March 31st. following certification. Thereafter, certified members will pay the annual maintenance fee as it falls due. This is effective September 1, 2003.

6.6 Complaints about or appeals of the certification process

- a) A complaint regarding certification may come to the Chair of the Certification Committee or President of FMC or the Executive Director who will attempt to resolve the complaint.
- b) If there is not a successful resolution the Executive Director, in consultation with the President, will name a member of the Board of Directors as an “Appeal Director” who has not had direct involvement with the candidate to review the complaint.
- c) The Appeal Director, will have the right to review documents, interview the candidate and those members of the Certifying Panel (Administrator or Assessors) who are involved with the candidate. The Appeal Director will have the power to make a final recommendation to either institute a new certification process for the candidate or dismiss the appeal and terminate the certification process. There is no further appeal.

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6.7 Protocol for establishing and maintaining Certifying Administrator(s) and Certifying Assessor(s).

FMC through the certification committee shall:

- a) Assist Provinces/Territories to establish and maintain Certifying Administrators and Certifying Assessor(s), or will provide the service to Provinces/Territories who are not ready to develop their own Administrators and Assessors;
- b) Invite feedback on the certification process through an evaluation tool and monitor, evaluate and revise the standards and the certification process on an ongoing basis; and
- c) Encourage access to continuing education for certifying personnel.