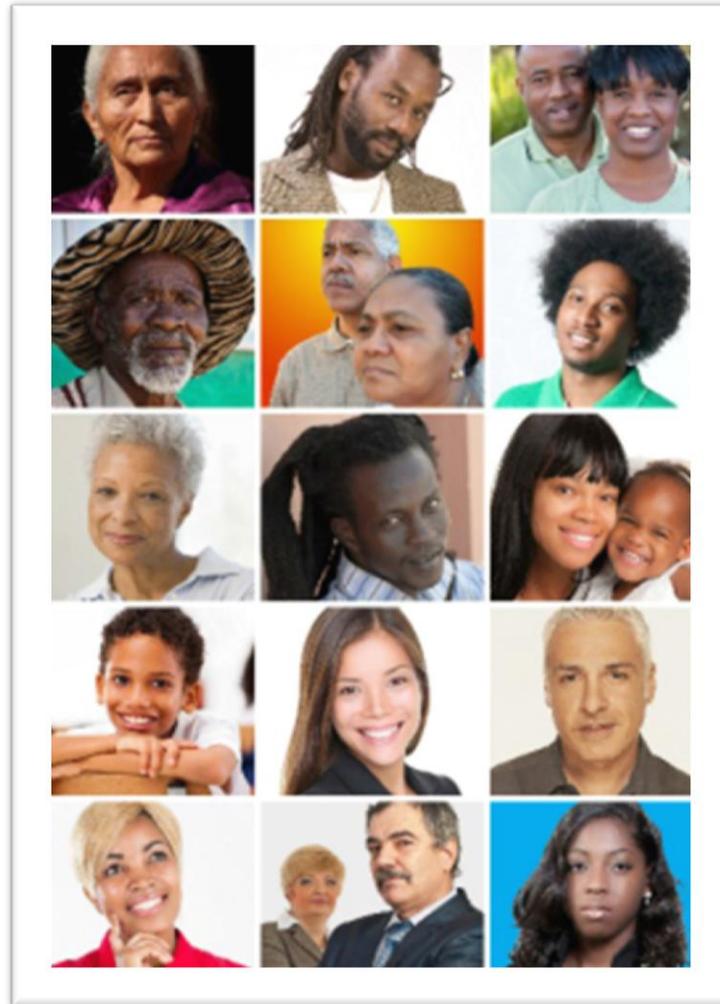




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**IMPACT JUSTICE PROJECT**

**MODEL CARICOM**

**COMMUNITY MEDIATION BILL**

February, 2017



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**COMMUNITY MEDIATION BILL, 20..**

**THE COMMUNITY MEDIATION BILL, 20..**

**EXPLANATORY NOTE**

(These notes form no part of the Bill but are intended only to explain its general purport)

The purpose of this Bill is to introduce a mediation process as an alternative to court proceedings. This will enable the parties to resolve disputes without recourse to the court system or, having already entered the court system, to avail themselves of the option to conclude the proceeding via mediation. Mediation is recognised as a faster and cheaper alternative to the costly and time-consuming process of litigation.

The mediation process, however, shall maintain the established legal protections of confidentiality, admissibility of evidence and immunity from suit for mediators, while establishing a Code of Ethics for the profession.

The provisions of the Bill are as follows:

**PART ONE  
PRELIMINARY**

Clause 1 contains the short title and commencement provisions.

Clause 2 is the interpretation section of the Bill.

**PART TWO  
MEDIATION MANAGEMENT UNIT**

Clause 3 establishes the Mediation Management Unit. The Unit is charged with responsibility for the effective implementation and administration of mediation and the regulation of mediators, mediator trainers and mediation bodies within [ ].

Clause 4 establishes the Manager of the Mediation Management Unit as the person responsible for the overall supervision of the Unit and further, imposes the responsibility on the Manager to establish and implement of all such policies and procedures that may be necessary to give effect to the provisions of this Act.

Clause 5 sets out the functions and powers of the Unit, including the formulation of standards, enforcing the observance of the Code of Ethics and investigating and disciplining mediators.

**PART THREE  
THE REGISTER**

Clause 6 requires the Mediation Management Unit to establish a Register that will contain the names of certified mediators, certified mediator trainers, mediator training programmes and mediation bodies registered by the Unit. Pursuant to section 6(2), no person shall work as a



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mediator, offer himself/herself as a mediator trainer, advertise itself as a mediation body or offer mediation training programmes, unless first registered with the Mediation Management Unit. By virtue of section 6(3) registration shall be annual and subject to such fees as the Minister determines, by regulations.

Clause 7 outlines the procedure for registration, which are set out in **Schedules 3 and 4** of the Bill.

### PART FOUR CONFIDENTIALITY AND RELATED MATTERS

Clauses 8 and 9 establish the framework for confidentiality, including situations where the confidentiality rules shall not apply.

Clause 10 gives immunity from suit to all certified mediators and other persons involved in the mediation process.

Clause 11 provides for the admissibility and inadmissibility of evidence in specific circumstances.

### PART FIVE COURT ANNEXED [CONNECTED] MEDIATION

Clause 12 makes provision for Court Annexed [Connected] Mediation and the rules governing such mediation established by the Court.

### PART SIX NON-COURT ANNEXED [CONNECTED] MEDIATION

Clause 13 provides for a non-exhaustive list of matters in **Schedule 5** that may be addressed under Community Mediation.

### PART SEVEN MISCELLANEOUS

Clause 14 establishes a Code of Ethics for mediation, which is set out in **Schedule 1**.

Clause 15 grants power to the Minister to make regulations for the matters set out therein, and in that regard, regulations have been drafted to facilitate the implementation of mediation and are set out in Schedules 2 to 5 of the Bill.

Clause 16 requires mediators with more than 5 years practical experience to be registered automatically by the Mediation Management Unit, subject to the provision of proof to the Unit of the required number of years' practical experience.



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Mediators with less than 5 years' experience will be eligible for registration provided that they satisfy the requirements of **Schedule 4**.

### **SCHEDULE 1**

#### **CODE OF ETHICS**

### **SCHEDULE 2**

#### **DISCIPLINARY PROCEEDINGS REGULATIONS**

### **SCHEDULE 3**

#### **REGULATIONS GOVERNING THE OPERATION OF MEDIATION BODIES**

### **SCHEDULE 4**

#### **TRAINING, CERTIFICATION AND REGISTRATION REGULATIONS**

### **SCHEDULE 5**

#### **COMMUNITY MEDIATION REGULATIONS**

#### **APPENDICES TO SCHEDULE 5**

##### **Appendix 1**

##### **Mediation Intake**

##### **Appendix 2**

##### **Agreement to Participate in Mediation**

##### **Appendix 3**

##### **Notification of Appointment of Mediator**

##### **Appendix 4**

##### **Mediator's Report**

##### **Appendix 5**

##### **Settlement Agreement**



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## COMMUNITY MEDIATION BILL, 20...

### THE MEDIATION BILL, 20..

#### Arrangement of Sections

##### **PART ONE PRELIMINARY**

1. Short title & Commencement
2. Interpretation

##### **PART TWO MEDIATION UNIT**

3. Establishment of Mediation Management Unit
4. Supervision of Unit
5. Functions and powers

##### **PART THREE THE REGISTER**

6. Requirement for registration
7. Registration procedure

##### **PART FOUR CONFIDENTIALITY AND RELATED MATTERS**

8. Confidentiality
9. Non-disclosure of confidential information
10. Immunity from suit
11. Admissibility of evidence

##### **PART FIVE COURT ANNEXED [CONNECTED] MEDIATION**

12. Referral to mediation



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**PART SIX  
NON-COURT ANNEXED [CONNECTED] MEDIATION**

13. Use of Non-Court Annexed [Connected] mediation

**PART SEVEN  
MISCELLANEOUS**

14. Code of Ethics

15. Regulations

16. Transitional

**SCHEDULES TO ACT**

**SCHEDULE 1  
CODE OF ETHICS**

**SCHEDULE 2  
DISCIPLINARY PROCEEDINGS REGULATIONS**

**SCHEDULE 3  
MEDIATION BODY REGULATIONS**

**SCHEDULE 4  
TRAINING, CERTIFICATION AND REGISTRATION  
REGULATIONS**

**SCHEDULE 5  
NON-COURT ANNEXED [CONNECTED] MEDIATION  
REGULATIONS**

**APPENDICES TO SCHEDULE 5**

**APPENDIX 1  
MEDIATION INTAKE**

**APPENDIX 2  
AGREEMENT TO MEDIATE**

**APPENDIX 3  
NOTIFICATION OF APPOINTMENT OF MEDIATOR**

**APPENDIX 4  
MEDIATOR'S REPORT**



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**COMMUNITY MEDIATION BILL, 20...**

**APPENDIX 5  
SETTLEMENT AGREEMENT**



**COMMUNITY MEDIATION BILL, 20...**

**An Act to provide for the mediation of disputes within  
communities as an additional mechanism for access to justice in  
[name of country]**

ENACTED by the House of Assembly [House of Representatives] of  
[.....] as follows:

Short Title &  
Commencement

1. This Act may be cited as the Mediation Act, 20....

**PART ONE  
PRELIMINARY**

Interpretation

2. In this Act,

“Code of Ethics” means the code of ethics for mediators and mediation bodies as set out in **Schedule 1** of this Act;

“Community mediation” means gender responsive mediation whereby a mediator promotes conflict resolution and problem solving for individuals, families, institutions, organizations and other entities within the community;

“Community mediation services” include the resolution of matters in relation to:

- (a) consumer disputes;
- (b) contractual disputes including homeowners disputes;
- (c) disputes within and between organisations;
- (d) family and relationship disputes;
- (e) juvenile conflicts;
- (f) landlord and tenant;
- (g) neighbourhood conflicts;
- (h) threats and harassment; and
- (i) trade disputes.

“Court” means the Court of Appeal, the High Court and the Magistrates Court;

“Court Annexed [Connected] Mediation” means any mediation process conducted under the auspices of the Court;

“mediation” means a voluntary, gender responsive and confidential process by which a mediator, a neutral third party, facilitates and encourages communication and negotiation



### COMMUNITY MEDIATION BILL, 20...

between the parties to the mediation, with the purpose of assisting the parties to arrive at a voluntary and non-coerced agreement;

“Mediation Body” means a body entered on the Register, established under section 6;

“Mediation Manager” means the person charged with responsibility for the management of the Mediation management Unit established under section 3;

“mediation process” includes all administrative processes and procedures necessary for the conduct of mediation;

Mediation Management Unit” or “Unit” means the Division/Department of the Ministry, established under section 3, with responsibility for the effective implementation and administration of mediation throughout [name of country], the processes for mediation, the establishment of standards and all matters related thereto;

“mediator” means a person who has successfully completed a training course in mediation offered by an accredited mediation training body.

“Minister” means the Minister with responsibility for [.....];

“Non-Court Annexed [Connected] Mediation” means the mediation process that is not conducted under the auspices of the Court which is used for the resolution of disputes of the kind listed in section 13;

“non-party participant” means a person other than a party or mediator, who is present at a mediation or otherwise participates in a mediation process with the approval of the parties;

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

“Regulations” means any regulations made pursuant to this Act;



## COMMUNITY MEDIATION BILL, 20...

“Settlement Agreement” means the document setting down the terms of agreement between the parties as prescribed in **Appendix 5**;

### PART TWO THE MEDIATION MANAGEMENT UNIT

#### Establishment of the Mediation Management Unit

3. (1) There is hereby established a Mediation Management Unit within the Ministry of [ ] for the purpose of performing the functions and exercising the powers vested in it under this Act.

(2) The staff of the Unit shall include a Mediation Manager and such other members of staff as are required for the performance of the functions of the Unit.

(3) The Mediation Manager and other staff of the Unit shall be appointed by the Public Service Commission [or on contract]).

#### Supervision of Unit

4. The Mediation Manager shall be responsible for the supervision of the Unit and the establishment and implementation of all policies and procedures necessary to give effect to the provisions of this Act.

#### Functions and powers

5. (1) The Mediation Management Unit is responsible for the effective implementation and administration of mediation throughout [name of country] and in that regard, shall perform the following functions:

- (a) formulate, publish and adopt standards for the registration of mediation training programmes and to register such programmes;
- (b) formulate standards for the certification of mediators and mediator trainers, including requirements for continuing education and re-certification;
- (c) prescribe requirements for the registration of mediation bodies;
- (d) maintain a register of mediators, mediator trainers, mediation training programmes and mediation bodies approved pursuant to the provisions of this Act;



### COMMUNITY MEDIATION BILL, 20...

- (e) monitor mediation training programmes and mediation bodies to ensure that the standards set under this Act are maintained;
  - (f) approve or reject applications for registration;
  - (g) promote mediation throughout the country;
  - (h) establish such mediation centres as are required;
  - (i) provide the administrative structure to support the mediation process, including maintaining a roster of mediators;
  - (j) compile sex-disaggregated statistics to be made available to the public and for inclusion in its annual report;
  - (k) prepare an Annual Report on the operations of the Mediation Management Unit and mediation throughout the country, for submission to the Parliament [National Assembly], through the Minister; and
  - (l) do all other things as may be necessary to give effect to the provisions of this Act.
- (2) The Mediation Management Unit shall exercise the following powers:
- (a) enforce the Code of Ethics set out in **Schedule 1**;
  - (b) investigate and discipline registered mediators or trainers of mediators in accordance with regulations provided for the purpose in **Schedule 2** or made subsequently thereafter by the Minister;
  - (c) do all other things as may be necessary to give effect to the provisions of this Act.
- (3) In the exercise of its function to set and monitor training standards as set out in subsection (1)(e), the Mediation Management Unit shall be guided by the standards set by the Regional Mediators Association which comprises members of national mediator associations



### COMMUNITY MEDIATION BILL, 20...

established in each CARICOM Member State, so as to ensure, as far as practicable, common standards across the region.

(4) Until the establishment of the Regional Mediators Association, the Mediation Management Unit shall, in the setting of standards, be guided by international best practice.

### PART THREE THE REGISTER

#### Requirement for registration

6.(1) Pursuant to section 5(1)(d), the Mediation Management Unit shall maintain a register containing:

- (a) a list of certified mediators indicating areas of specialization of each mediator where applicable;
- (b) a list of certified mediator trainers;
- (c) a list of approved mediation bodies; and
- (d) a list of approved mediation training programmes.

(2) Subject to section 16, no person shall work as a mediator, offer himself/herself as a mediator trainer, advertise itself as a mediation body or offer mediation training programmes, unless registered with the Mediation Management Unit.

(3) Registration shall be annual and subject to such fee as the Minister shall, by Regulations, prescribe.

#### Registration procedure

7. (1) Subject to section 16, a person or other body that wishes to have his/her or its name or his/her or its training programme registered pursuant to section 6 shall-

- (a) apply in writing to the Mediation Management Unit; and
- (b) satisfy the relevant parts of **Schedule 3** or **Schedule 4**, as applicable.

(2) The Unit shall, within 3 months of receipt of an application for registration, make a determination upon the application and, in the case of a successful applicant enter the name of the person, body or training programme on the Register.



## COMMUNITY MEDIATION BILL, 20...

### PART FOUR CONFIDENTIALITY AND RELATED MATTERS

#### Confidentiality

8. For the purposes of this Part, “confidential information” means any information expressly intended by the source not to be disclosed, or which is otherwise 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 communication made in the mediation process, including any memorandum, notes or work product of the mediator, party or non-party participant;
- (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.

#### Non-disclosure of confidential information

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

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

- (a) the disclosure is required by or under an Act of Parliament or Order of the Court;
- (b) the disclosure is made with the consent of the parties; or
- (c) 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 realisation; or
  - (ii) the disclosure is necessary to report to the appropriate authority the commission of an offence or prevent the likely commission of an offence.



## COMMUNITY MEDIATION BILL, 20...

(3) Where a mediator breaches the requirements of this section, the procedures set out in **Schedule 2** shall apply.

### **Immunity from suit**

10. (1) No legal proceedings may be commenced 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/her 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 mediator or by any person who in the course of his or her employment or training gained access to such confidential information, the person suffering loss or damage shall be entitled to bring suit for damages.

(3) Subject to subsection (2) and section 9(2), the 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 or any confidential information which came to his or her knowledge during the mediation process.

### **Admissibility of evidence**

11. (1) Evidence of –

(a) a communication made in a mediation; or

(b) a document, whether delivered or not, prepared –

(i) for the purpose of;

(ii) in the course of; or

(iii) pursuant to a decision taken or an undertaking given in a mediation,

is not admissible in any proceedings.

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

(a) the parties consent to the evidence being adduced in the proceedings concerned;

(b) the substance of the evidence has been disclosed with the express or implied consent of all parties;



### **COMMUNITY MEDIATION BILL, 20...**

- (c) the substance of the evidence has been partly disclosed with the express or implied consent of the parties and full disclosure of the evidence is reasonably necessary to enable a proper understanding of the other evidence that has already been adduced;
- (d) the document or communication includes a statement to the effect that it was not to be treated as confidential;
- (e) the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute;
- (f) the proceeding in which it is sought to adduce the evidence is a proceeding to enforce an agreement between the parties to settle the dispute, or a proceeding in which the making of such an agreement is in issue; or
- (g) 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 FIVE COURT-ANNEXED [CONNECTED] MEDIATION**

### **Referral to mediation**

12.(1) Where in any matter the Court considers it appropriate to refer parties to mediation, it may do so.

(2) The parties to any matter before the Court may, upon giving notification to Court, agree to retain the services of a mediator.

(3) Rules for the administration and conduct of court-annexed mediation shall be established by the Court.



## COMMUNITY MEDIATION BILL, 20...

### PART SIX COMMUNITY MEDIATION

#### Use of community mediation

13. Community Mediation shall be used to facilitate the resolution of disputes including, but not limited to those listed in **Schedule 5**.

### PART SEVEN MISCELLANEOUS

#### Code of Ethics

14. There is hereby established a Code of Ethics for all mediators, as prescribed in **Schedule 1**, and such Code may only be amended by Order of the Minister, subject to negative resolution of Parliament.

#### Regulations

15.(1) The Minister may make Regulations for the following:

- (a) certification and registration, including renewal thereof, of mediation bodies, mediation training programmes, trainers and mediators;
- (b) procedures to be followed with respect to community mediation;
- (c) procedures to be followed by registered mediation bodies;
- (d) disciplinary procedures in respect of complaints made against mediation bodies, mediators and mediator trainers;
- (e) removal of registration status and deregistration of mediators, trainers, mediation training programmes and mediation bodies;
- (f) fees that may be charged under this Act; and
- (g) any other processes, procedures, standards and requirements as may be necessary to give effect to the provisions of this Act.

(2) Where the Minister proposes to make regulations in respect of fees, pursuant to subsection (1)(f), consideration may be given to training, experience, subject matter expertise, number of parties to a mediation and



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any other matters as may be relevant to the calculation of fees to be charged by a mediator.

### **Transitional**

16.(1) Persons who, at the commencement of this Act, have more than 5 years practical experience as mediators, shall apply to the Mediation Management Unit for registration and the Unit shall enter their names on the Register.

(2) At the commencement of this Act, persons with less than 5 years practical experience as mediators shall apply to the Unit for registration and the Unit shall consider these applications in accordance with the provisions for registration under **Schedule 4** of this Act.

(3) Pending the determination by the Unit of an application made under subsection (2), mediators shall continue to operate in their respective capacities.

(4) A person to whom subsection (1) applies shall submit proof of practical experience together with the application.



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## COMMUNITY MEDIATION BILL, 20...

### SECTION 14

## SCHEDULE 1 CODE OF ETHICS

### Application

1. This Code of Ethics applies to certified mediators and is intended to assist and guide mediators in their conduct and to provide a framework within which mediation is conducted and regulated.

### Interpretation

2. In this Code –

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

“impartial” means the commitment of the mediator to serve all parties, whereby the mediator approaches the arguments of both parties as being equally valid;

“neutrality” means remaining impartial to one side or another, having no vested interest, either emotional or real, in the outcome of the situation.

### Responsibilities of certified mediators

3. Mediators shall –

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



### COMMUNITY MEDIATION BILL, 20...

- (c) act fairly in dealing with the parties, have no personal interest in the terms of the settlement, show no bias towards individuals or parties involved in the disputes; and
- (d) ensure that the parties are informed of the mediation process.

#### **Ethical standards**

4.(1) The primary role of the mediator shall be to facilitate the voluntary resolution of a dispute while the primary responsibility for the resolution of the dispute and the shaping of a settlement shall rest with the parties to the mediation.

(2) A mediator shall recognise that mediation is based on the principle of self-determination by the parties and upon the ability of the parties to reach a voluntary, un-coerced agreement.

(3) A mediator shall encourage self-determination by the parties in resolving their dispute and, subject to paragraphs (1) and (2), shall refrain from being directive or judgmental regarding the issues in dispute and options for settlement.

(4) A mediator shall encourage mutual respect between the parties.

(5) At the commencement of the session, a mediator shall inform the parties that they may consult other professionals, where appropriate, in order to assist them in making informed decisions.

(6) The mediator shall not offer a personal or professional opinion as to how a court would resolve the dispute.

(7) During the mediation, a mediator shall not use any title or honorific to which the mediator is entitled.

#### **Competence**

5.(1) A mediator shall mediate only when the he or she has the necessary qualifications, training and experience to enable the mediator to satisfy the reasonable expectations of the parties.

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



## COMMUNITY MEDIATION BILL, 20...

### **Impartiality**

6.(1) A mediator shall provide mediation services only in respect of those disputes in which the mediator is able to act impartially with respect to the parties.

(2) Where the mediator's impartiality is called into question, he or she shall decline to serve or withdraw from serving as a mediator.

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

(4) A mediator shall neither give nor accept a gift, favour, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

(5) A mediator shall, subsequent to the conclusion of a session, continue to conduct himself or herself in an impartial manner, in any instance where he or she encounters a person who was a party to a concluded mediation.

### **Conflict of interest**

7.(1) Where an actual or potential conflict of interest arises, a mediator shall disclose the conflict of interest and shall withdraw from the mediation process.

(2) The duty to disclose conflicts of interest shall be a continuing obligation throughout the mediation process.

(3) A mediator who practises in another profession shall not establish a professional relationship in that other profession with either party to the mediation during or for a reasonable period after the mediation.

(4) A mediator who practices in another profession and has already established a professional relationship in that other profession with a party, shall not conduct a mediation involving that party while that other professional relationship exists or for a reasonable period after that relationship has ended.

### **Confidentiality**

8.(1) A mediator shall discuss issues of confidentiality with the parties before beginning the session, including limitations on its scope and the



## COMMUNITY MEDIATION BILL, 20...

extent of confidentiality provided in any caucus that the mediator holds with a party.

(2) The mediator shall not disclose to anyone, who is not a party to the mediation, any information obtained through the mediation except with the written consent of the parties or in accordance with the provisions of sections 9(2) and 10 (3) of this Act.

(3) The mediator shall advise the parties that the confidentiality of the mediation shall be governed by sections 9 and 10 of this Act, which the mediator shall explain to the Parties.

### **Duty of mediator to ensure understanding by the parties**

9. (1) The mediator shall ensure that the parties understand the nature of the process, the procedures, the particular role of the mediator and the parties' relationship to the mediator and to each other.

(2) Where at any time the mediator believes that a party is unable to understand the process or participate fully in it, whether because of mental impairment, emotional disturbance, intoxication, language barrier or for any other reason, the mediator shall suspend or terminate the process.

### **Responsibility to children in family mediation**

10. In family mediation the mediator shall encourage and assist the parties to consider, in addition to their desires, the welfare and needs of any children affected by the issues which are the subject of the mediation.

### **Fees**

11. (1) A mediator shall at the beginning of the mediation process, fully disclose and explain the basis of compensation, fees and charges to the 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.

### **Advertising by mediator**

12.(1) All advertising by a mediator shall honestly represent the services to be rendered and no claims of specific results or promises should be made for the purpose of obtaining business.

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



## COMMUNITY MEDIATION BILL, 20...

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

### **Agreement to Participate in Mediation**

13.(1) The mediation shall not commence unless and until the disputing parties sign an Agreement to Participate in Mediation in the manner prescribed in **Appendix 2**.

(2) The mediator shall explain the mediation process to the parties before they sign the Agreement to participate in Mediation.

(3) The signature of the Parties on the Agreement to Mediate shall be confirmation of their understanding of the process.

(4) At a minimum, the Agreement to Participate in Mediation shall set out the procedures to be followed, including—

- (a) the confidentiality of the mediation process, in particular that all statements made or documents produced in mediation are for the purpose of settlement and cannot be disclosed or provided to a court or arbitrator;
- (b) the right of any party or the mediator to suspend or terminate the process at any time;
- (c) the disclosure requirements;
- (d) an acknowledgement by the parties that they have been advised to seek independent legal advice with respect to the issues to be mediated; and
- (e) the fees to be paid by the parties.

### **Settlement Agreement**

14. (1) At the end of the session, the mediator shall draft a Settlement Agreement in the manner prescribed in **Schedule 3**.

(2) The Settlement Agreement shall be signed by the parties and witnessed by the mediator.

(3) Either party may register the Agreement.



## COMMUNITY MEDIATION BILL, 20...

### SECTION 15(1)(e)

## SCHEDULE 2 DISCIPLINARY PROCEEDINGS REGULATIONS

### Citation

1.(1) These regulations may be cited as the Mediation Act (Disciplinary Proceedings) Regulations, 201..

### Interpretation

2. In these regulations, “the Act” means the Mediation Act, 201..

### Application of Regulations

3. These Regulations apply to complaints against mediators on the Register pursuant to section 6 of the Act.

### Disciplinary Panel

4.(1) There shall be a Disciplinary Panel (or “Panel”) consisting of three members to hear and determine complaints against a mediator.

(2) The Disciplinary Panel shall be appointed at the discretion of the Minister and shall be comprised of an Attorney-at-Law of at least 5 years standing, one registered mediator and a third person.

(3) The term of the Disciplinary Panel shall be 3 years.

(4) Alternate members shall be appointed by the Minister, of matching qualification and experience to the Panel members, and it shall be the duty of such alternates to act in the capacity of the panel member in respect of whom they are an alternate, in the event that the panel member is, for any reason, unable to act.

### Procedure

5.(1) A complaint against a mediator shall be in writing, signed by the complaining party and shall include –

- (a) the complainant’s name;
- (b) address and contact information of the complainant;
- (c) the mediation reference number;
- (d) the date of the mediation;
- (e) the name of the mediator against whom the complaint is being made;
- (f) the nature of the complaint; and
- (g) any other information as the Disciplinary Panel may require.



### COMMUNITY MEDIATION BILL, 20...

(2) The complaint referred to in paragraph (1) shall be mailed (post or electronic mail) or hand-delivered to the Mediation Management Unit at its address.

(3) The complaint shall be made within 30 days of the conclusion of the mediation.

(4) The Disciplinary Panel shall review the complaint [within 30 days of receipt of the complaint] to determine whether the allegations, if true, constitute a violation of the Code of Ethics.

(5) If the allegations made in the complaint, if true, would not constitute a violation of the Code, the complaint shall be dismissed and the complainant and the mediator shall be notified in writing within [15] days, with the mediator being given a copy of the complaint together with the Panel's dismissal of the complaint.

(6) Where the Disciplinary Panel concludes that the allegations of the complaint, if true, would constitute a violation of the Code of Ethics, the Panel shall immediately serve on the mediator, by personal service or by registered mail, a copy of the complaint and a request for a written response to the allegations.

(7) The mediator shall respond within 30 days of receipt of correspondence from the Panel, failing which the allegations shall be deemed to be admitted.

(8) The hearing of the complaint by the Disciplinary Panel, including the response to the allegations by the mediator, shall in no case take more than 45 days from the initial finding of the Panel that the complaint could constitute a violation of the Code.

#### **Hearing**

6.(1) At the hearing, the parties may be represented by Attorneys-at-Law but the strict rules of evidence shall not apply.

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

#### **Referral of complaint to mediator**

7.(1) The Panel may, in its discretion, refer the complainant and the mediator to mediation conducted by a mediator agreed on by both parties, to resolve the issues raised by the complainant.



### COMMUNITY MEDIATION BILL, 20...

(2) If the complaint is resolved through mediation, the Panel shall endorse the terms of the mediated agreement.

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

#### **Sanctions**

8. Sanctions shall be imposed within 30 days of a finding against the mediator and may include -

- (a) a private reprimand;
- (b) notifying the mediator of corrective action to be taken for the mediator to remain on the register;
- (c) notifying the registered mediation agency with which the mediator is affiliated, if so affiliated, of the complaint and the result of the hearing;
- (d) removal of the mediator from the register and publication of same, with conditions for reinstatement, if any;

#### **Confidentiality**

9.(1) All files, records and proceedings of the Panels that relate to, or arise out of any complaint, shall be confidential except –

- (a) as between the Mediation Management Unit, members of the Disciplinary Panel and staff;
- (b) as otherwise required or permitted by law ; and
- (c) to the extent that the complainant and the mediator waive confidentiality.

#### **Appeals**

10. A party may appeal the decision of the Disciplinary Panel to the Court.

#### **Effect of criminal conviction**

11.(1) Where it comes to the attention of the Mediation Management Unit that a mediator has been convicted of a serious criminal offence, the Unit shall call upon such mediator to show cause why he or she should not be removed from the register of mediators.



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### COMMUNITY MEDIATION BILL, 20...

(2) For the purposes of subsection (1) a serious criminal offence includes offences of fraud, deception, sexual violence, domestic violence, intimidation and physical assault.

(3) A certificate of conviction issued by the Court shall be sufficient evidence of a mediator's conviction for such an offence.



## COMMUNITY MEDIATION BILL, 20...

### SECTION 15(1)(c)

### SCHEDULE 3

### MEDIATION BODY REGULATIONS

#### Citation

1.(1) These Regulations may be cited as the Mediation Body Regulations, 20..

(2) In these regulations, “the Act” means the Mediation Act, 201...

#### Undertaking of mediation body

f 2. A mediation body registered under the Act shall comply with all provisions of the Act and any regulations made thereunder.

#### Employment with mediation body

3. (1) A mediation body shall require a person seeking employment with that body to be registered as a mediator under the Act.

(2) If a mediation body has additional requirements or standards for selection it shall have in place explicit, transparent and verifiable procedures to assess such a person.

#### Obligations

4.(1) A mediation body shall –

- (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 Management Unit, on a continual up- dated basis, containing the names of its mediators registered under the Act as well as a register of its mediators whose registrations have been cancelled;
- (c) require compliance by its mediators with the Code of Ethics and any additional standards that it may set, so long as such additional standards are not in conflict with any part of the Code of Ethics;
- (d) have a satisfactory mechanism in place for addressing consumer complaints;
- (e) undertake to provide practical experience to persons desirous of being registered as mediators.



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### **Fees**

5. Any fees charged by the mediation body shall be reasonable and made known to parties prior to mediation.

### **Changes to rules and policies**

6. The mediation body shall undertake to notify the Mediation Management Unit of any changes to its rules or policies, which may alter the basis on which its registration was granted.



## COMMUNITY MEDIATION BILL, 20...

SECTION 15(1)(a)

### SCHEDULE 4 TRAINING, CERTIFICATION AND REGISTRATION REGULATIONS

#### PART 1 Certification and Registration of Mediators

##### **Citation**

1.(1) These Regulations may be cited as the Mediation Act (Certification and Registration) Regulations, 201....

##### **Interpretation**

2. In these regulations, “the Act” means the Mediation Act, 201...

##### **Basic mediation certification**

3.(1) A candidate for certification as a mediator shall –

- (a) complete a minimum of forty (40) hours in a basic mediation training programme registered by the Mediation Unit;
- (b) demonstrate practical experience and suitability, by providing evidence of having-
  - (i) observed a minimum of 2 mediations conducted by a certified mediator of at least 10 hours in total; and
  - (ii) conducted 2 mediations under the supervision and observation of a certified mediator to the point of resolution.

(2) Where, pursuant to the requirements of clause 3(b) no mediations are available at the time of training, either for observation or for a candidate to conduct, the candidate shall be required to undergo two additional days of training, which shall include mediation simulation/role-play.

##### **Advanced mediation certification**

4.(1) In addition to the requirements set out in regulation 3, a candidate for advanced mediation certification, including family mediation and Court Annexed [Connected] mediation shall -

- (a) complete a minimum of 40 hours in a specialised mediation training programme registered by the Mediation Management Unit; or



### **COMMUNITY MEDIATION BILL, 20...**

(b) have a degree in law, social work, mental health matters, behavioural or social sciences or any other equivalent qualification and at least one year's experience in the area of specialty for which an advanced mediation certification is sought.

(2) In addition, the candidate must provide evidence of having –

(a) observed 3 mediations conducted by an advanced certified Mediator; and

(b) conducted 3 mediations under the supervision and observation of an advanced certified mediator in the area of specialty for which an advanced mediation certificate is sought.

#### **Registration of mediators**

5.(1) An applicant for registration as a mediator shall submit the following documents to the Mediation Management Unit:

(a) the original and copy of the certificate of completion of mediation training from a recognised university or accredited educational institution;

(b) 2 references from persons attesting to the applicant's good character and integrity;

(c) a police certificate of good character;

(d) 2 forms of photographic identification and 2 passport sized photographs.

(2) Where, prior to the commencement of this Act, a person was certified as a mediator without having undertaken the practical component required by clause 3, that person shall be required to fulfil that requirement before being registered.

## **PART 2**

### **Certification and Registration of Mediator Trainers**

#### **Trainer qualification**

6. A person, not being a corporate person, shall meet the qualifications, training and standards set out in this Act in order to be



### COMMUNITY MEDIATION BILL, 20...

certified and registered as a trainer by the Mediation Management Unit, and in particular shall have –

- (a) successfully completed a minimum of 80 hours of mediation training;
- (b) conducted a minimum of 25 mediations as the mediator; and
- (c) have been trained in instructional development or successfully completed any other training skills development programme.

#### **Subject matter specialist**

7. (1) A mediation trainer with expertise in a particular field, shall have–

- (a) not less than 3 years professional practice in the area in which he/she conducts training;
- (b) the ability to connect the area of expertise with the mediation process.

#### **Registration of mediation trainers**

8.(1) An applicant for registration as a mediator trainer shall submit the following documents to the Unit:

- (a) the original and copies of certificates as proof of completion of training required under clause 6;
- (b) 2 references from persons attesting to the applicant's good character and integrity;
- (c) a police certificate of good character;
- (d) 2 forms of photographic identification and 2 passport sized photographs.

(2) A person who is seeking to register as a mediator trainer subject matter specialist, in addition to the requirements set out in sub-clause (1) above, shall provide proof of 5 years or more professional practice in the area in which he/she proposes to conduct training.



## COMMUNITY MEDIATION BILL, 20...

### PART 3

#### Registration of Mediator Training Programmes

##### Requirements for registration of a training programme

9.(1) An individual or organisation that wishes to have a mediator training programme registered with the Unit shall satisfy the requirements of this Part.

(2) When applying for registration, an individual or body shall provide the Mediation Management Unit with a proposed programme agenda and training materials to be used for training purposes and the Unit shall examine the programme agenda and training materials for compliance with its training standards.

(3) Materials to be supplied to participants shall include, but not be limited to –

- (a) the training manual to be given to participants;
- (b) required readings including current legislation and rules governing mediation; and
- (c) all exercises and handouts and a copy of all role-plays and videos or other electronically displayed material.

(4) In addition to the requirements of subsection (2) above, the individual or body, as the case may be, shall submit, to the Mediation Management Unit, the résumé of the person hosting the training programme.

(5) Where the Mediation Management Unit finds any deficiencies in the programme agenda or the training materials to be used, the individual or mediation body, as the case may be, shall correct those deficiencies prior to any registration being granted.

##### Programme agenda

10. (1) At least 28 days prior to the hosting of a programme, an individual or mediation body, as the case may be, shall submit the actual programme agenda to the Mediation Management Unit so that the Unit can ensure continued compliance both with the previously submitted agenda and the Unit's training standards.

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

- (a) the presentation topics;



### COMMUNITY MEDIATION BILL, 20...

- (b) the time allotted to each topic;
- (c) the learning objectives covered under each topic; and
- (d) any required activities, such as writing agreement exercises, video simulations, role-plays which are covered under each presentation topic.

(3) An agenda which was previously approved by the Mediation Management Unit and which has not changed in any material way shall not be subject to the requirements of paragraphs (1) and (2).

(4) Material revisions, deletions and additions to the training materials shall be reported to the Mediation management Unit prior to any course offering.

(5) Where the Mediation Management Unit undertakes an audit of the programme being presented and it is apparent that there has been a material alteration to the agenda or use of training materials which was not submitted to the Unit for approval as required by subsection (3), the mediator trainer or the mediation training body, as the case may be, shall be liable to deregistration.

### Conducting training programme

11.(1) When conducting a training programme, the mediation trainer shall ensure that -

- (a) facilities are secured and appropriate equipment for training is provided;
- (b) the training agenda is followed and that all content is covered;
- (c) evaluation forms are completed and maintained;
- (d) a certified trainer is in attendance at all times; and
- (e) certificates are issued to participants who complete the requirements of attendance and participation.

(2) Basic mediator training programmes shall be not less than 40 contact hours.

(3) Required readings shall be completed by participants at times when the training programme is not in session and time used for such reading shall not count towards the required number of hours of training.



### COMMUNITY MEDIATION BILL, 20...

(4) Trainers shall incorporate methods to ensure that the required readings are completed.

#### **Training methodology**

12.(1) The training methodology shall include the following:

- (a) pedagogy – training programmes shall include but are not limited to the following –
  - (i) lectures;
  - (ii) group discussions;
  - (iii) written exercises;
  - (iv) mediation simulations and role-plays;
- (b) readings, which shall be provided by the trainer to supplement the training;
- (c) written exercises, which shall include the reducing of an agreement to writing;
- (d) role-play requirements, the objective of which shall be for a participant to develop confidence and experience and such role-play shall be undertaken under the observation of a certified trainer or coach as follows:
  - (i) role-plays – every participant shall take part in at least two role-plays acting as the sole mediator and two role-plays acting as a disputant;
  - (ii) Mediation demonstration – all training programmes shall present a role-play mediation simulation;
  - (iii) Gender awareness – all aspects of training programmes shall make linkages with gender issues, and shall include readings and sessions that acknowledge and consider differentials that exist between women and men within the various sectors and institutions of society.

(2) Class size shall be limited to 30 persons.

#### **Attendance**

13.(1) A training programme shall require participants to complete the training requirements by attending one entire training programme in which the certified trainer is responsible for ensuring that the integrity of each



### COMMUNITY MEDIATION BILL, 20...

portion of the programme is not compromised and any portion of training missed shall be made up as directed by the trainer.

(2) Where a participant misses more than 5% of the programme hours, the participant shall be required to repeat an entire programme.

#### Content of basic training programme

14 .(1) Each basic mediation training programme shall comprise a theoretical and practical component.

(2) The theoretical component of the programme shall include the following topics:

(a) Conflict resolution concepts including –

(i) the difference between non-litigation methods of dispute settlement, including negotiation, mediation and arbitration;

(ii) the 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) the effective use of basic principles of negotiation and the use of mediation as an extension of negotiation; and

(iv) the contrasts between mediation and litigation and the differing roles of judges, attorney-at-law, experts, mediators and arbitrators.

(b) Court Processes – Court Annexed [Connected] Mediation;

The statutes, rules, local procedures and forms governing mediation;

(c) Mediation stages and techniques including –

(i) the stages and components of the mediation;



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- (ii) the role of the mediator in structuring the mediation, 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) 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) the characteristics which enhance or undermine the effectiveness of the mediator, including language use, non-verbal communication and eye contact;
- (v) the principles and functions which define the mediator's role and distinguishes it from other forms of dispute resolution processes;
- (vi) the 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) the requirement that upon commencement of the mediation, 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;



### COMMUNITY MEDIATION BILL, 20...

- (viii) the mediator's role in identifying issues and developing a full understanding of the parties' agendas;
- (ix) the importance of framing issues in neutral language and in such manner that the parties' respective interests are identified and communicated;
- (x) the means of differentiating between issues which are appropriate for mediation and those that are not appropriate;
- (xi) the identification of individuals who are entitled to participate in the mediation as well as those non-parties who may need to be present;
- (xii) the identification of situations in which participation of non-parties, such as grandparents, children, new spouses may be necessary in the mediation;
- (xiii) the identification of and demonstration techniques to obtain closure;
- (xiv) the 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) the identification of appropriate techniques for mediating cases in which one or more parties are represented by attorneys-at-law;
- (xvi) the identification of appropriate techniques for handling difficult situations, such as -
  - a. when a party walks out;
  - b. makes personal attacks on another party or the mediator;



### COMMUNITY MEDIATION BILL, 20...

- c. as party is not really engaged in the mediation;
  - d. a party or attorney is recalcitrant;
  - e. a party or non-party is emotionally overwrought; or
  - f. a party appears to be physically ill.
- (xvii) the consequences of an agreement as well as a failure to reach agreement;
- (d) communication skills including –
  - (i) the identification and demonstration of the essential elements for effective listening, questioning and note taking;
  - (ii) the identification of and demonstration if appropriate non-verbal communication;
  - (iii) the requirement 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 formalisation and implementation of the agreement;
  - (iv) the development of an awareness that people differ in how they make decisions, how they process information and how they communicate;
- (e) standard of conduct and ethical behaviour for mediators including –
  - (i) the mediator's ethical obligations, potential ethical dilemmas in the mediation context and the appropriate course of action when confronted with an ethical dilemma;
  - (ii) the mediator's responsibility to the parties and to the Courts;
  - (iii) the circumstances in which a mediator shall adjourn, terminate, cancel or postpone a mediation;



### COMMUNITY MEDIATION BILL, 20...

- (iv) the importance of respecting the roles of other professional disciplines in the mediation process and the promotion of cooperation between mediators and other professionals;
- (v) the importance of promoting an awareness by the parties of the interest of persons affected by actual or potential agreements who are not represented at the mediation;
- (f) diversity issues including –
  - (i) the recognition of personal biases, prejudices and styles which are the product of one's background and personal experiences;
  - (ii) the socio-economic, cultural, racial, ethnic, age, gender, religious, sexual orientation and disability issues which may arise in mediation and which may affect the parties' negotiation style, ability or willingness to engage in mediation;
- (g) the role of the litigants' attorneys-at-law in the mediation process and the potential for conflicts which includes –
  - (i) the attorney-client relationship within the context of mediation;
  - (ii) the need to establish credibility with attorneys and parties;
  - (iii) writing settlement agreements.

(3) The Mediation Management Unit may add topics to the theoretical and practical components from time to time.

(4) In the practical component of the training programme, the candidate shall have -

- (a) observed a minimum of 2 mediations conducted by a certified mediator of at least 10 hours in total; and



## COMMUNITY MEDIATION BILL, 20...

(b) conducted 2 mediations under the supervision and observation of a certified mediator to the point of resolution.

(5) Where, pursuant to the requirements of sub-clause (3) no mediations were available at the time of training, either for observation or to be conducted by a candidate, the candidate shall be required to undergo two additional days of training, which shall include mediation simulation/role-play.

### Part 4

#### Registration of Family Mediation Training Programmes

##### Application of Part 3

15. Paragraphs 9-13 of Part 3 of these Regulations governing the registration of mediation training programmes shall also apply to the registration of Family Mediation Training Programmes.

##### Content of family mediation training programmes

16. In order to be registered, each family mediation training programme shall include the following topics:

- (a) psychological and gender issues in separation and divorce and dynamics including:
  - (i) the impact divorce has on individual and on family dynamics and the implications for the mediation process;
  - (ii) how emotions impact on divorce issues and a party's ability to effectively mediate;
  - (iii) the indicators of domestic violence;
  - (iv) the impact domestic violence has on the parties and their capacity to participate meaningfully in the mediation;
  - (v) the stages of divorce and grief and the implications for the mediation process;



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- (vi) 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 including –
  - (i) 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) the possible impacts of the mediation process on the children's well-being and behaviour and when and how to involve children in mediation;
  - (iii) the definitions and concepts of co-parenting and shared responsibility;
  - (iv) children's developmental stages and how they relate to divorce and parenting arrangements;
  - (v) the impact of parental conflict on children's well-being and the parental alienation syndrome;
  - (vi) options for different parenting arrangements which consider the needs of the children and each parent's capacity to parent;
  - (vii) the indicators of child abuse and/or neglect;
- (c) family law including:
  - (i) access to children;
  - (ii) shared parental responsibility;
  - (iii) custody, care and control;
  - (iv) maintenance for children and guidelines for maintenance for children;



### COMMUNITY MEDIATION BILL, 20...

- (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 including –
- (i) domicile;
  - (ii) matrimonial home;
  - (iii) transfers of property;
  - (iv) legal expenses;
  - (v) life insurance products;
  - (vi) alimony; and
  - (vii) pension and retirement plan,
- which is intended to assist the parties in effectively gathering personal and family financial information;
- (e) community resources and referral process including:
- (i) the circumstances and manner in which outside experts may be used effectively and how to assist the parties in deciding on appropriate community resources;



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- (ii) the 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) the appropriate courses of action when confronted with substance abuse during the mediation;
- (iv) the circumstances in which to refer parties to services for child protection and domestic violence.



## COMMUNITY MEDIATION BILL, 20...

SECTION 15(1)(b)

### SCHEDULE 5

#### COMMUNITY MEDIATION REGULATIONS

##### **Non-Court Annexed [connected] Mediation**

1. A person may utilise mediation services to facilitate the resolution of disputes including but not limited to the following matters:

- (a) landlord and tenant disputes;
- (b) trade disputes;
- (c) consumer disputes;
- (d) disputes within and between organisations;
- (e) threats and harassment;
- (f) neighbourhood conflicts;
- (g) family and relationship disputes;
- (h) contractual disputes including home owners' disputes;
- (i) community disputes;
- (j) matters referred to mediation by the local Police;
- (k) juvenile conflicts (truancy, delinquent children beyond control and gang related activities).

##### **The mediation process**

2. (1) A request for mediation in respect of the matters listed in Regulation 1 shall be made to the Mediation Management Unit by a party on the Mediation Intake Form prescribed in **Appendix 1**.

(2) The Mediation Management Unit shall, within 7 days of receipt of the request for mediation, notify the other party that a request for mediation has been made.

(3) The Mediation Management Unit shall provide the parties with the roster of mediators from which the parties may choose a mediator.



### COMMUNITY MEDIATION BILL, 20...

(4) The parties shall inform the Mediation Management Unit of the choice of mediator and the Unit shall contact the mediator for the purpose of setting a date for commencement of the mediation.

(5) Where the parties fail to agree on a choice of mediators, the Mediation Management Unit shall appoint a mediator from the Register, and in making that appointment, the Mediation Management Unit shall give preference to a mediator who has not been chosen to mediate a dispute within the last 6 months.

(6) The parties shall submit to the Mediation Management Unit an Agreement to Participate in Mediation Form prescribed in **Appendix 2**.

(7) Within 14 days of the parties agreeing to a mediator, the Mediation Management Unit shall give formal notice to the parties of the name of the mediator and the date and time of the mediation using the Notification of Appointment of Mediator Form, set down in **Appendix 3**.

(8) A mediator assigned the task of mediating a dispute shall make every effort to conclude the matter within 30 days from the date of its commencement and, if not concluded within the period, the mediator shall inform the Unit.

(9) All parties to mediation or their duly appointed representatives who have the authority to settle the matter shall attend the mediation.

(10) A person other than the parties may attend the mediations where both parties agree.

(11) The Mediation Management Unit shall ensure that all matters are properly scheduled and shall—

- (a) assist the mediator in obtaining the relevant advice or guidance;
- (b) take the necessary action reasonably required to facilitate the mediation of disputes; and
- (c) ensure that members of staff maintain a high standard of work and are kept abreast of any matter which may impact upon their work.

#### **Settlement by the parties**

3.(1) Where an agreement is reached by the parties, the Agreement shall be recorded in writing and signed by the parties, in the Settlement Agreement Form set out in **Appendix 5**.



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(2) A mediator, on concluding a mediation shall, within 3 days thereafter—

(a) inform the Mediation Management Unit; and

(b) file with the Unit the report of the Mediator in the Mediator's Report Form prescribed in **Appendix 4**, and the Settlement Agreement Form, prescribed in **Appendix 5**.

#### **Confidentiality**

4. If the parties request that the terms of the Agreement remain confidential, the mediator shall give effect to that request which shall be recorded in the Mediator's Report and the Settlement Agreement Form, at **Appendices 4 and 5** respectively.

#### **Termination of mediation**

5. (1) A party to mediation may at any time terminate the mediation.

(2) Notwithstanding sub-regulation (1), a mediator may at any time terminate a mediation where in his/her opinion further efforts at mediation are unlikely to resolve the dispute.

(3) Where mediation is terminated under sub-regulation (1) or (2), the mediator shall within 3 days thereafter send his/her report to the Mediation Unit in the form prescribed in **Appendix 4**.



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**COMMUNITY MEDIATION BILL, 20...**

**APPENDIX 1**

**MEDIATION INTAKE FORM**

**FILE No:** ..... **INTAKE:**.....dd.....mm.....yr

**REFERRED BY:** .....

**INTAKE OFFICER:** .....

***FIRST PARTY***

***SECOND PARTY***

**NAME:** .....

**NAME:** .....

**ADDRESS:** .....

**ADDRESS:** .....

**Phone (Home):** .....

**Phone (Home):** .....

**(Work):** .....

**(Work):** .....

**(Mobile):** .....

**(Mobile):** .....

**Age:** .....

**Age:** .....

**Sex: Male/ Female**

**Sex: Male/ Female**

**Employed: Yes/No**

**Employed: Yes/No**

**Marital Status: Single/Married/Divorced/  
Separated/Widowed/Common Law**

**Marital Status: Single/Married/Divorced/  
Separated/Widowed/Common Law**

**REPRESENTATIVE**

**REPRESENTATIVE**

**NAME:** .....

**NAME:** .....

**Phone (Home):** .....

**Phone (Home):** .....



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(Work): .....

(Work): .....

(Mobile): .....

(Mobile): .....

***THIRD PARTY***

***FOURTH PARTY***

NAME: .....

NAME: .....

ADDRESS: .....

ADDRESS: .....

Phone (Home): .....

Phone (Home): .....

(Work): .....

(Work): .....

(Mobile): .....

(Mobile): .....

Age: .....

Age: .....

Sex: Male/ Female

Sex: Male/ Female

Employed: Yes/No

Employed: Yes/No

Marital Status: Single/Married/Divorced/  
Separated/Widowed/Common Law

Marital Status: Single/Married/Divorced/  
Separated/Widowed/Common Law

**REPRESENTATIVE**

**REPRESENTATIVE**

NAME: .....

NAME: .....

Phone (Home): .....

Phone (Home): .....

(Work): .....

(Work): .....

(Mobile): .....

(Mobile): .....

**MATTER DISPUTED**

(a) landlord and tenant dispute;



**COMMUNITY MEDIATION BILL, 20...**

- (b) trade dispute;
- (c) consumer dispute;
- (d) disputes within or between organisations;
- (e) threats and harassment;
- (f) neighbourhood conflict;
- (g) family and relationship dispute;
- (h) contractor dispute including  
home-owner dispute;
- (i) community dispute;
- (j) contract dispute;
- (k) juvenile conflicts including truancy,  
children who have come into conflict  
with the law and gang related activities;
- (l) other

.....  
*Intake Officer*

Date ...../...../.....

dd.                  mm.                  yr.



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**COMMUNITY MEDIATION BILL, 20...**

**APPENDIX 2**

**AGREEMENT TO PARTICIPATE IN MEDIATION**

**This Agreement** is made between

**Party 1.** .....

**Party 2.** .....

**Party 3.** .....

**Party 4.** ..... and

**The Mediator:** .....

We agree to participate in the Mediation process and we have read or had read to us the following terms which we understand and acknowledge and to which we agree.

***The Mediator***

The Mediator is neutral and has no interest in the affairs of the parties to the dispute. The role of the mediator is to help the parties come to a voluntary resolution of the issues presented for mediation.

***The Parties***

The parties to the dispute agree to participate voluntarily in the mediation process and agree to make a sincere effort to reach an agreement and conduct themselves showing mutual respect and consideration for the views, interests and values of each other.

***Independent Legal Advice***

- (a) The mediator is unable to and will not give the parties any legal advice;
- (b) The parties are encouraged to obtain their own independent legal advice if they so desire, prior to, during or after mediation.

***Confidentiality***

- (a) all communication and information, whether written or oral, arising from or during the mediation, shall be treated by the parties and by the mediator as confidential.



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### COMMUNITY MEDIATION BILL, 20...

(b) the parties agree that they will not require the mediator—

- (i) to testify in court; or
- (ii) to submit any report for use in legal proceedings or otherwise disclose any written or oral communication that took place during the mediation.



**COMMUNITY MEDIATION BILL, 20...**

- (c) The parties also agree that they will not sue the mediator involved in their mediation, the Mediation Management Unit or the Ministry.
- (d) The mediator shall disclose confidential information when required to do so by Court Order or other judicial authority as provided for in the Act or where the information reveals a potential threat to any person’s health or safety.

***Conclusion of Mediation***

- (a) Each party may withdraw from the mediation at any time before the conclusion of the mediation.
- (b) The parties acknowledge that the mediator may end the mediation if the mediator believes that continuation of the mediation would result in harm or prejudice or would not be in the best interest of the parties.
- (c) If the mediation ends in accordance with (a) or (b) the parties are free to deal with the dispute in any other way, within the Laws of [ ], provided that confidentiality of the mediation is maintained.

The parties have read and understood this Agreement or had this Agreement read to them and agree to proceed with the mediation under the terms of this Agreement.

**Signatures of the Parties:**

- 1. ....
- 2.....
- 3.....
- 4.....

**Signature of the Mediator:**

.....

Date:

...../...../.....  
**dd/ mm / yr**



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**COMMUNITY MEDIATION BILL, 20...**

**APPENDIX 3**

**NOTIFICATION OF APPOINTMENT OF MEDIATOR**

Further to your request for mediation filed with the Mediation Management Unit of the Ministry of [ ] on the .....day of ..... 20.. you are requested to attend mediation on

.....day of .....20.....

The mediation is scheduled from .....to .....

at .....

The mediator(s) is (are): Mr./Ms. ....

Please be at the venue at least fifteen (15) minutes before the start of the mediation and bring this Notice with you.

Please call the Mediation Management Unit at ..... Extension:  
.....

by 12.00 noon...../...../.....if you have decided not to attend mediation.  
dd. mm. yr.



**COMMUNITY MEDIATION BILL, 20...**

**APPENDIX 4**

**MEDIATOR'S REPORT**

**PARTY No. 1:** .....

**PARTY No. 2:** .....

**PARTY No. 3:** .....

**PARTY No. 4:** .....

**File No:** .....

.....**REPORT**.....

(a) Terminated

(b) Agreement

(c) No Agreement

(d) Continuing

(e) Terms of the agreement to remain confidential

**Signature of the Parties**

**Party 1:** .....

**Party 2:** .....

**PARTY No. 2:** .....

**PARTY No. 2:** .....

**Date:** ...../...../.....



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**COMMUNITY MEDIATION BILL, 20...**

**dd. mm. yr.**

.....  
**Signature of Mediator**

Date: ...../...../.....  
**dd. mm. yr.**





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**COMMUNITY MEDIATION BILL, 20...**

Passed in the [House of Assembly] [House of Representatives] of

[ ] this day of

20..

I confirm the above.

---

Clerk of the [House of Assembly]

[ House of Representatives]

Passed in the Senate [ ] this day of

20..

I confirm the above.

---

Clerk of the Senate [ ]