

## COMPETENCIES GUIDELINES

*Amended December 2010.*

This is not an exhaustive list of competencies and is intended as a guideline of generally recognized desirable qualities for competent mediators.

### ADMINISTRATIVE SKILLS

#### **General Definition:**

The ability to organize and conduct the practice of mediation in an efficient and effective manner.

1. Ability to organize and maintain office systems
  - appointment system
  - correspondence system
  - engagement file system with monitoring feature
  - time log, billing and disbursements receivable system
2. Ability to work within the system/rules governing the accepting and handling of engagements
  - records details of appointment (terms, conditions and fee)
  - confirms appointment in writing (engagement letter or contract)
  - ensures all pertinent correspondence, sent and received, is provided to both parties
  - demonstrates a clear understanding of the applicable Rules and Ethics
3. Ability to allocate time, effort and other resources
  - expeditiously reviews and deals with documents and information received
  - develops an overall perspective of the engagement
  - draws up timetable for dealing with preparatory matters and conduct of the mediation
4. Ability to organize the required needs of the mediation
  - adequacy of session room to accommodate the parties and others
  - capability to provide privacy for consultations and caucusing
  - suitability of the location in terms of minimizing external distractions or interruptions
  - capability of session facility to meet special needs of participants
5. Ability to bring the engagement to completion
  - has a good understanding of closure techniques and the settlement process
  - understands the importance of working co-operatively to draft the memorandum of understanding/settlement agreement
  - submits fee billing in accordance with terms of engagement or within a reasonable time

## PROCEDURAL SKILLS

### General definition:

Ability to recognize the nature of the dispute and establish clear understandings concerning the process with and between the parties

6. Ability to determine if mediation is appropriate to the particular situation:
  - reviews contracts between the parties (if they exist)
  - ensures the issues in dispute are covered by the mediation clause or are suitable for mediation
  - determine that he/she possesses adequate knowledge of the business or issues encompassing the dispute
  - ensures there is no reason for parties to challenge the appointment
  - ensures that the appointment is consistent with applicable laws or institutional rules
7. Ability to establish clear understandings
  - clearly explains the role of the mediator
  - clearly defines and explains the mediation process
  - emphasizes the mutually agreed solution principle
  - emphasizes the right of the parties to withdraw
  - emphasizes the confidentiality principle and explains its limitations
  - determines that participants have sufficient authority
  - reviews the engagement letter/agreement to mediate
  - ensures unrepresented parties have addressed legal and expert advice issues
  - in cooperation with the parties, estimates time that will be required for the mediation
  - formalizes the engagement in writing
8. Ability to supervise the preliminary meeting
  - supervises conduct of the meeting
  - explains the purpose and content of the meeting
  - brings the parties to agreement on procedural matters
9. Ability to deal with preliminary matters
  - holds preliminary meeting if required or requested
  - provides assistance to the parties in preparing for the mediation
  - determines if legal counsel, witnesses, experts or other parties will be involved
  - ensures all parties have a clear understanding of how the mediation session will be conducted and settlement effected
  - ensures all necessary procedural steps have been completed

## RELATIONSHIP SKILLS

### General Definition:

The ability to instil and maintain a positive relationship and good communication

#### 10. Ability to maintain a positive relationship

- acts with courtesy, respect and patience and encourages the parties to do the same
- separates mediator's personal values from issues of the mediation
- earns trust
- builds rapport
- compliments progressive behaviour
- indicates empathy for the issues
- does not pre-judge the parties on the issues
- is modest in attitude held towards others
- works with strongly held values of the disputants, including ethnic, gender and cultural differences
- devotes appropriate care and attention towards the parties

#### 11. Ability to listen effectively

- listens to both parties in an passive and active manner
- exhibits an understanding of the importance of body language to the listening process
- intervenes selectively to obtain clarification, assist in understanding or maintain order
- exhibits patience and does not interrupt except in the most serious circumstances

#### 12. Ability to speak effectively

- uses clear diction and collateral body language
- asks succinct questions when necessary
- is direct but not intimidating
- speaks in a clear audible voice
- uses simple language
- utilizes terminology that is common to the parties' industry

#### 13. Ability to maintain an atmosphere conducive to communication

- uses civil language
- permits humour which is beneficial to the process
- displays understanding of the factual material and submissions
- puts parties and witnesses/collaborating presenters at ease
- avoids distracting body movements or facial expressions
- discourages an excessively adversarial climate
- shows empathy

## FACILITATION SKILLS

### General definition:

Ability to conduct the mediation session using fair, flexible and effective procedures, skills and techniques

#### 14. Ability to conduct a fair session

- maintains neutrality and impartiality
- understands the nature of power imbalances and how to deal with them
- treats parties fairly and equally
- preserves party autonomy
- allows each party an opportunity to examine witnesses/collaborating presenters
- allows parties to make objections and respond fully to objections
- allows parties adequate time to deal with surprises
- deals expeditiously with questions on procedural matters
- keeps interruptions to a minimum
- imparts and encourages courtesy and respect
- accepts criticism in a constructive manner

#### 15. Ability to promote an assertive tone

- speaks in an assertive manner
- encourages the parties to conduct themselves in an assertive manner
- assists the deliberations by rephrasing accusatory or aggressive statements into an assertive form

#### 16. Ability to deal with high emotion

- recognizes the need for and advantage of venting
- calls a recess, when appropriate, to diffuse negative circumstances of high emotion
- holds a caucus to deal with severe negative circumstances of high emotion

#### 17. Ability to organize and analyze data

- develops an overall perspective of the engagement
- understands the sequence and nature of events contributing to the dispute
- exhibits the ability to deal with complex factual material
- organizes data into a logical library format
- determines the most effective and efficient way to utilize the data to complement the mediation process
- utilizes ancillary tools such as flip charts and white boards to assist understanding

#### 18. Ability to deal with the issues

- possesses an adequate knowledge of the business/industry related to the dispute
- assists the parties to clarify and identify the issues
- isolates those issues that are of no or little relevance

- separates the parties' claims and issues
- assists the parties to establish an objective methodology to evaluate claims
- reconstructs the issues in terms that will assist understanding
- screens out non-mediabile issues

19. Ability to surface needs and interests

- exhibits an understanding of the importance of surfacing needs and interest and
- conveys this importance to the parties
- exhibits an ability to identify symptoms
- asks probing questions directed to uncover potential needs and interests
- asks open ended questions directed to uncover potential needs and interests
- encourages candid responses
- holds caucuses focused on uncovering needs and interests

20. Ability to advance the process

- empowers the parties to own and actively participate in the process
- separates the people from the problem
- assists the parties to maintain focus and momentum
- assists the parties to evaluate submissions and the relevant material
- is open to suggestions and ideas presented by the parties
- assists the parties to generate creative options
- assists the parties to evaluate their positions using BATNAs and reality checks
- assists parties to make their own informed choices
- utilizes appropriate tools and techniques to break impasse, achieve understanding and steer the process to settlement

21. Ability to bring closure and achieve settlement

- recognizes the optimum moment when the parties express a desire to deal/compromise
- assists the parties to bargain a solution
- utilizes appropriate tools and techniques to achieve closure
- assists the parties to move from closure to settlement
- assists the parties to assess whether proposed settlement terms can be implemented
- assists the parties/their advisors to draft a memorandum of understanding or settlement agreement