

ADR INSTITUTE OF CANADA, INC.



Principles  
Criteria  
Protocol  
Competencies

for the designation

**CHARTERED MEDIATOR**

September 2011

## PART I

### INTRODUCTION

Mediation is a process of intervention in a dispute or negotiation by an impartial third party who has no authority to decide the matter. The third party assists disputing parties to voluntarily reach their own mutually acceptable settlement by structuring the negotiation, maintaining the channels of communication, assisting each party to articulate their needs, identifying the issues and assisting the parties to develop creative ideas to resolve the dispute.

The ADR Institute of Canada, Inc. (ADR Canada) owns the trademarks for the designations Chartered Mediator, C.Med, Médiateur Certifié, Médiatrice Certifiée, and Med.C. ADR Canada is applying for a trademark for Med.A, (which is the short form for Médiatrice Agrée and Médiateur Agrée) which is the French translation of C.Med preferred by our Quebec affiliate and is the term presently used on all French certificates and applications. All other groups and individuals are prohibited from adopting or using any of these marks or any marks that might be mistaken for these marks without the consent of the ADR Canada.

The Chartered Mediator designation recognizes a "generalist competence" at a high level, the goal being to assist the public in finding experienced and qualified mediators. The C.Med designation is awarded to mediators who meet the qualifications set out, and is not dependent on any specific or prescribed mediator style<sup>1</sup>. Mediators need not be chartered in order to offer mediation services. Additional skills and competencies may be desirable for mediation in specific areas.

To ensure that a high and consistent set of standards is met by those entitled to use this designation, ADR Canada has established general principles, a set of criteria and a protocol to be used in assessing the eligibility of an applicant for the designation and for the granting of the designation.

ADR Canada is national in scope and is represented throughout Canada by affiliated Regional Institutes who administer and regulate the designation C.Med/Med.A in their respective regions.

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<sup>1</sup> "Style" refers to fundamental mediator approach, e.g. facilitative, evaluative, etc. Regardless of mediator style, the competencies listed in Appendix A must be demonstrated for a mediator to qualify for the C.Med designation.



## PART II

### GENERAL PRINCIPLES

A member of ADR Canada who meets the standards required of a Chartered Mediator may apply for the designation on the form prescribed by ADR Canada.

The following process is used to qualify an applicant for the designation:

- i. Satisfactory completion of the educational and practical experience and skills assessment requirements;
- ii. Review and approval by a Regional Chartered Mediator Accreditation Committee (RCMAC) and ratification by the Regional Board of Directors;
- iii. Review and approval of the application and all reviewer forms and assessments by ADR Canada staff. Any application that is not complete and in the prescribed format will be returned to the RCMAC;
- iv. Policy issues unrelated to an applicant's skills assessment will be forwarded to the National Appeal and Audit Committee (NAAC) which will review and make policy and process recommendations for consideration by the ADR Canada Board of Directors. The Board of Directors will make all policy decisions, and send the application back to the RCMAC for decision.
- v. Where an RCMAC does not approve an applicant, the applicant may appeal the decision to the NAAC.
- vi. Once ADR Canada determines an application to be complete, the applicant will be informed that the C.Med designation has been awarded. The name of the applicant will be read into the minutes of the next Board of Directors meeting.

The designation is awarded by ADR Canada and is subject to renewal or revocation in accordance with the rules established by ADR Canada.

The certificate presented to a successful applicant remains at all times the property of ADR Canada.



## PART III

### DEFINITIONS:

NATIONAL APPEAL AND AUDIT COMMITTEE: is appointed by ADR Canada to:

1. Hear appeals from RCMACs;
2. Audit a percentage of applications from each affiliate at random to ensure consistency and adherence to standards.

The Committee shall be comprised of no fewer than 3 Chartered Mediators.

REGIONAL CHARTERED MEDIATOR ACCREDITATION COMMITTEE: is appointed in each region by ADR Canada's regional affiliate and will be comprised of no fewer than 3 Chartered Mediators.

COMPETENCY ASSESSMENT PROGRAM: is a program designed to assess the competencies of mediation practitioners as set out in Appendix A.

### CRITERIA

An applicant must meet the following criteria and conditions:

#### I. EDUCATION

- a. Completion of at least 80 hours mediation theory and skills training in mediation training programs approved by ADR Canada or acceptable to the RCMAC.

and

- b. Completion of 100 hours of study or training in dispute resolution generally, the psychology of dispute resolution, negotiation, public consultation, mutual gains bargaining, communication, management consulting, conflict management, or specific substantive areas such as law, psychology, social work, counselling, etc. The specific requirements for this additional 100 hours shall be left to the discretion of each RCMAC.

or

- c. Where the RCMAC agrees that the applicant has satisfied or exceeded the above through proven skills, competency, and longevity in practice as recognized and recommended by peers, the educational requirements listed above may be waived. The decision of the RCMAC must be supported by documented reasons for the recommendation.



## II. PRACTICAL EXPERIENCE

The applicant must have conducted at least 15 mediations<sup>2</sup> as the sole mediator or the mediation chairperson<sup>3</sup> and all 15 of the mediations must have been fee paid<sup>4</sup>.

In the context of meeting the practical experience requirement, letters of reference are not applicable.

## III. SKILLS ASSESSMENT

The applicant must demonstrate competency in mediation as per the competency process outlined in Appendix A, which shall be determined through:

- a. Observation and approval of the applicant conducting a mediation as a sole mediator by at least three Chartered Mediators<sup>5</sup> approved by RCMAC ("Assessors"), to occur within two years before or after the date of the C.Med application, through one or more of the following: the applicant conducting an actual mediation, video recorded mediation, mediation role play, or other processes approved by the NAAC in advance of the assessment.

or

- b. In some circumstances, an interview between the applicant and the RCMAC. For an interview to satisfy this requirement, the applicant, prior to the interview, must be determined by the RCMAC to qualify for an interview in lieu of observation through longevity in practice, and recognition and recommendation by peers. When relying on an interview rather than observation, the RCMAC may require letters of reference from clients who

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<sup>2</sup> A "mediation" is a discreet event contracted for by the parties. A situation where a person helps two subordinates resolve a conflict is not considered a mediation. However, if the full or part time duties of an applicant specifically include the conducting of structured mediations, these would count toward the C.Med. Where a person is conducting mediations with staff members who do not report to that person, these may count as mediations provided the person was specifically identified as an impartial mediator, and the mediation was structured and conducted as a mediation, not as an informal meeting to resolve a problem.

<sup>3</sup> The applicant must clearly have been the lead mediator or chairperson, not simply a co-mediator.

<sup>4</sup> A "paid mediation" is a mediation where the mediator receives a salary, payment or reasonable honorarium specifically for mediation services. The amount received by the mediator is not subject to any specific minimum amount, provided it is a legitimate and reasonable amount in the context within which the mediation took place. In exceptional circumstances described in writing, where an un-paid mediation is demonstrably complex and involved, the RCMAC may, at its discretion, accept an unpaid mediation toward the total of 15.

<sup>5</sup> In exceptional circumstances where only two Assessors are available, they may proceed with an assessment. In such cases, the recommendation for approval must be a consensus.



have directly participated in mediations with the applicant, as per the Letters of Reference Guidelines.

or

- c. Another means of assessing an applicant's competency in the process of mediation that meets the goals and standards of a. or b. above, proposed by the applicant or the RCMAC and approved by NAAC or ADR Canada.

#### **IV. PLEDGE**

The applicant must pledge to comply with ADR Canada's Code of Ethics and Code of Conduct.

#### **V. MEMBERSHIP**

An applicant and a Chartered Mediator must be a member of good standing of ADR Canada which includes being a member in good standing of a regional affiliate.

#### **VI. FEES**

C.Med renewal fees are set by ADR Canada and are payable directly to ADR Canada. These fees are in addition to annual membership fees payable to a regional affiliate.

#### **VII. CONTINUING EDUCATION AND ENGAGEMENT**

Every three years, Chartered Mediators are required to acquire 100 points as per the Continuing Education and Engagement Program.

#### **VIII. INSURANCE**

Chartered Mediators are required to provide proof of Errors and Omissions Insurance with a limit of at least \$1 million aggregate.



## PART III

### PROTOCOL

1. Regional Affiliates invite/accept applications from members who believe they possess the standards required of a Chartered Mediator.
2. The Regional Affiliates will establish their own process to evaluate applicants in accordance with the requirements established by ADR Canada.

### APPLICATION FORM

All applicants will use the standard application and evaluations forms prescribed by ADR Canada.

### APPLICATION AND APPROVAL PROCESS

1. Where the RCMAC unanimously approves an applicant, the RCMAC will forward the application to the Manager of Designations at ADR Canada.
  - a. ADR Canada will review the application and forms to ensure the application is complete and the requirements established by ADR Canada have been met.
  - b. Where ADR Canada considers an application to be complete, the Manager of Designations will inform the applicant and his or her RCMAC that the application has been approved. The RCMAC will notify the Regional Affiliate of the approval. ADR Canada will forward the C.Med certificate to the applicant and ensure that the applicant's name is read into the minutes of the Board of Directors.
  - c. Where ADR Canada finds the application incomplete, the Manager of Designations will return the application to the RCMAC to be completed.
2. Where approval of an applicant is not unanimous and the lack of unanimity is unrelated to policy or process, the RCMAC's decision will be final. The RCMAC's decision in relation to the skills assessment and demonstration of competencies is not subject to appeal.
3. Where a decision is made to deny or a decision to approve is not unanimous and is related to or raises policy or procedure issues, the application will be forwarded to NAAC which will review the policy or procedure issues and prepare recommendations for the Board of Directors. The Board of Directors will make final decisions on policy and procedure. Once the policy or procedure has been confirmed by the Board of Directors, the application will be sent back to the RCMAC for processing.



## Right to Appeal

4. Where the RCMAC does not approve an applicant, it will so notify the applicant, providing reasons and recommendations, along with information about appeal processes.
5. The decision of the RCMAC is final, but for the right of appeal to the NAAC by a failed applicant based on issues related to application of policy or procedure.

## Audit and Quality Control

6. A percentage of applications will be sent to the NAAC for review after the RCMAC decision and review by the Manager of Designations.
7. The NAAC will review applications sent to it for review to ensure all documentation is in order and the prescribed process has been followed. Concerns of the NAAC will be directed to the Manager of Designations, the Board of Directors, and the appropriate RCMAC to ensure future applications are correctly processed and reviewed. The decision of the RCMAC on a particular application will remain final notwithstanding the comments of the NAAC.

## VOTING

Any member of an RCMAC or Regional Affiliate Board of Directors who has voted on any application at that level must not vote on that application as a member of the NAAC or the Board of Directors.



## APPENDIX A

The following areas will form the basis of the skills assessment.

- Part One consists of 9 required skills/competencies, meaning that unless all skills in Part One are rated Meets or Exceeds, the applicant will fail on the skills assessment. All skills in this section must be observed and rated.
- Part Two consists of 12 additional skills, at least 6 of which must be rated Effective. If 7 or more of the Part Two skills are rated either Less than Effective or Not Applicable/Didn't Observe, this shall constitute a fail on the part of the applicant.
- Skills will be assessed at a high standard.

### Part One:

SKILLS, TO BE ASSESSED REGARDLESS OF STYLE OR APPROACH USED	MEETS OR EXCEEDS	NOT COMPETENT	DID NOT OBSERVE
1. Ability to establish and describe to the disputants key mediation processes and ground rules, such as confidentiality, role of the mediator, caucusing, authority to settle, and respectful behaviour			
2. Ability to work with strongly felt ideas or values of the disputants			
3. Ability to separate the mediator's personal values from issues under consideration			
4. Ability to work with the parties effectively to get the facts, issues and perceptions clearly out on the table			
5. Ability to treat the parties and to run the mediation process in a fair, impartial, respectful and dignified manner			
6. Ability to ensure that all parties have an opportunity to participate in the process			
7. Ability to preserve parties' autonomy in decision-making			
8. Ability to uncover parties' needs and interests			
9. Ability to address ethical issues in mediation in a manner consistent with the Code of Conduct, through discussion of			



an Ethical Dilemma			
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## Part Two:

SKILLS, TO BE ASSESSED REGARDLESS OF STYLE OR APPROACH USED	EFFECTIVE	LESS THAN EFFECTIVE	NOT APPLICABLE OR DID NOT OBSERVE
1. Ability to listen actively			
2. Ability to organize and structure complex factual material effectively for the parties			
3. Ability to understand the negotiation process and the elements of effective negotiation			
4. Ability to earn trust and develop rapport			
5. Ability to assist parties to invent creative options			
6. Ability to assist the parties to identify principles and criteria that will guide their decision-making			
7. Ability to assist the parties to assess their non-settlement alternatives			
8. Ability to assist the parties to make their own informed choices			
9. Ability to analyze problems, identify and separate the issues involved, and frame these issues for resolution or decision-making			
10. Ability to deal with strong emotion			
11. Ability to assist the parties to evaluate their options effectively and impartially, in a way that respects the parties' autonomy, using BATNA's and reality checks			
12. Ability to help the parties maintain focus and forward momentum in the mediation			



## 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

