

A BILL

entitled

FAMILY MEDIATION ACT 2018

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FAMILY MEDIATION ACT 2018

SCHEDULE Family Mediation Council

WHEREAS it is expedient to provide for mediation with respect to certain matters in family law proceedings, to establish a Family Mediation Council, to regulate persons who act as family mediators, and to make consequential and related amendments:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Introductory Matters

Citation

1 This Act may be cited as the Family Mediation Act 2018.

Interpretation

2 In this Act, unless the context indicates otherwise—

“affected family member” means a member of a family, including a child, about whom the proceedings brought under a specified Act relate;

“child” means a person who has not attained the age of eighteen years;

“Council” means the Family Mediation Council established under section 10;

“court” means a special court, a court of summary jurisdiction, or the Supreme Court;

“family” means—

(a) a husband and wife or domestic partners;

(b) a husband and wife or domestic partners where there is a child of the family, and includes any step-parent or guardian of the child;

(c) the father and mother of a child, whether or not they are married,

and includes married persons living apart from each other and persons who are divorced, whether or not there is a child of the family;

“family mediator” means a person who is licensed under this Act as a family mediator;

“Minister” means the Minister responsible for child and family services;

“parent” means the father, mother, adoptive parent, step-parent or guardian of a child, and includes the prospective adoptive parent of a child;

“special court” means a special court constituted under the Magistrates Act 1948;

“specified Act” means any of the following Acts—

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- (a) the Adoption of Children Act 2006;
- (b) the Children Act 1998;
- (c) the Domestic Partnership Act 2018;
- (d) the International Child Abduction Act 1998;
- (e) the Maintenance Orders (Reciprocal Enforcement) Act 1974;
- (f) the Matrimonial Causes Act 1974;
- (g) the Matrimonial Proceedings (Magistrates' Courts) Act 1974;
- (h) the Minors Act 1950;
- (i) where proceedings have been brought, any other Act which the court considers appropriate for those proceedings.

“step-parent” means—

- (a) the spouse or domestic partner of the custodial parent of a child;
- (b) a step-parent as defined under section 2 of the Adoption of Children Act 2006.

Purpose and principles of this Act

3 (1) This Act seeks to facilitate the resolution of certain matters in family law proceedings by means of mediation.

(2) In the administration of this Act as it relates to children, the court shall be guided by the principle that parents of a child provide value in the upbringing of the child, but the welfare of the child is the paramount consideration.

Application

4 Before proceeding under this Act, the court shall determine whether or not the subject matter of the proceedings brought under the specified Act, is a matter that is suitable for mediation.

Family Mediation Orders

Court may order mediation assessment

5 (1) Where the court has determined under section 4 that the subject matter of the proceedings is suitable for mediation, it shall offer to the parties to the proceedings and any affected family member, an opportunity to participate in mediation.

(2) The opportunity to participate in mediation may be offered by the court—

- (a) at the commencement of the proceedings; or
- (b) at any time thereafter, as the court deems appropriate, where—

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- (i) an opportunity to participate in mediation had been offered under paragraph (a) but not accepted; or
- (ii) mediation had been attempted but the dispute was not resolved.

(3) Where an offer by the court under subsection (2) is accepted, the court shall by order direct that the parties to the proceedings and any affected family member participate in an assessment by a family mediator to determine if each of those persons is suitable for mediation.

Assessment by family mediator

- 6 (1) The family mediator shall, during the assessment, inquire as to whether—
- (a) there are reasonable grounds to suspect—
 - (i) child abuse;
 - (ii) domestic violence;
 - (iii) physical abuse;
 - (iv) mental abuse; or
 - (v) drug abuse,by or to either party to the proceedings or any affected family member; or
 - (b) there are matters, other than those specified in paragraph (a), that would indicate that either of the parties or any affected family member may not be suitable for mediation.
- (2) Upon completion of the assessment, the family mediator shall prepare a mediation assessment report in which he sets out his opinion as to whether or not the parties and any affected family member are suitable for mediation.
- (3) Notwithstanding subsection (2), where any of the matters referred to under subsection (1)(a) or (b) exists, the family mediator shall determine that the parties and any affected family member are not suitable for mediation, and shall state this in the report.
- (4) The family mediator shall submit a copy of the mediation assessment report to the court.

Court may order mediation

- 7 (1) The court shall, where the opinion of the family mediator in the mediation assessment report is that the parties to the proceedings and any affected family member are suitable for mediation, by order direct that the parties and any affected family member participate in mediation for such period and subject to such conditions as may be specified in the order; but no order shall continue in force for more than two years after the date on which the order came into force.
- (2) Upon completion of the mediation process, the family mediator shall prepare a mediation report stating—

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- (a) whether or not the dispute has been resolved; and
- (b) the terms of any agreement reached as a result of mediation.

Court to make agreement order of the court

8 (1) Where an agreement has been reached by mediation pursuant to section 7, the court shall, with such modifications as it deems necessary, make the agreement an order of the court for the purposes of the specified Act.

(2) Subsection (1) applies in respect of an agreement reached by the parties and any affected family member prior to proceedings being brought under a specified Act, whether the agreement was reached by way of mediation or not.

(3) An order made under this section shall form part of the record of the proceedings brought under the specified Act, and—

- (a) a court shall have regard to the order in any further or related proceedings under a specified Act; and
- (b) a person shall have regard to the order where the specified Act—
 - (i) imposes a requirement on him; or
 - (ii) imposes a duty on him,and the mediation order is relevant to that requirement or duty.

Court records not to be inspected

9 An application for an order under this Act and any document filed in court in connection with the application are not subject to inspection, except—

- (a) by the Director of Child and Family Services; or
- (b) by order of the Court.

Family Mediation Council

Family Mediation Council

10 (1) The Co-Parenting Mediation Council, established under section 36GA of the Children Act 1998, is hereby renamed the Family Mediation Council.

(2) The provisions of the Schedule apply to the Family Mediation Council.

Functions of the Council

11 The functions of the Council are to—

- (a) provide guidance and direction to persons who wish to qualify as family mediators;
- (b) determine applications made by persons wishing to be licensed as family mediators;

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- (c) license family mediators and issue practising certificates;
- (d) establish and maintain a register of licensed family mediators;
- (e) develop and maintain common standards for family mediation;
- (f) arrange, with the consent of persons participating in mediation, for a qualified mediator to observe the conduct of—
 - (i) a person undergoing training or qualifying as a mediator;
 - (ii) a family mediator, where the Council has received complaints in respect of the mediator,

by means of video recording, observation areas or other methods, for the purpose of maintaining the quality and standards set by the Council;
- (g) exercise regulatory responsibilities with respect to family mediators, and ensure that mediation services are provided to the highest standard;
- (h) provide information on family mediation to persons who wish to participate in mediation, and to educate the public generally on family mediation;
- (i) undertake reviews and client surveys of the practice of family mediation in Bermuda;
- (j) establish and maintain a complaint procedure and disciplinary procedure with respect to family mediators.

General and policy directions

12 The Minister may, after consulting with the Council, give to the Council such general or policy directions as appear to the Minister to be necessary in the public interest; and the Council shall give effect to such directions.

Reports of the Council

13 (1) The Council shall, as soon as practicable after the end of each calendar year, forward to the Minister a report which shall include such matters as may be prescribed by Regulations, and any general or policy directions given by the Minister to the Council during that year, and the manner in which those directions were carried out.

(2) The Minister shall cause copies of the report of the Council to be laid before both Houses of the Legislature.

Licensing and Regulation of Family Mediators

Licensing of family mediators

14 (1) A person shall not practise under any name, style or title containing the words “family mediator” or “licensed family mediator” unless he is licensed as a family mediator under Regulations made under section 15.

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(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for twelve months, or to both such fine and imprisonment.

Regulations

15 (1) The Minister shall, after consulting with the Council, make regulations for the carrying out or giving effect to this Act, including regulations with respect to—

- (a) requirements for licensing, including eligibility, and professional and other qualifications;
- (b) applications for a licence as a family mediator, and the renewal of a licence;
- (c) fees that may be charged by family mediators for their services;
- (d) disciplinary matters in relation to family mediators, including suspension and cancellation of a licence for failing to comply with the Code of Practice;
- (e) requirements by family mediators to submit annual returns to the Council, and the matters to be included in the returns;
- (f) publication of the register;
- (g) the procedure for submitting complaints against a family mediator;
- (h) appeals to the Supreme Court against a decision of the Council to refuse an application for a licence or to renew a licence, or to suspend or cancel the licence of a family mediator;
- (i) matters to be included in the Council's annual report to the Minister.

(2) Regulations made under subsection (1) are subject to the negative resolution procedure.

Code of Practice

16 (1) The Minister may, after consulting with the Council, issue a Code of Practice in respect of matters relating to—

- (a) general principles of mediation;
- (b) the scope of mediation;
- (c) the mediation process;
- (d) the conduct, duties, and responsibilities of family mediators.

(2) A family mediator shall take account of the Code issued by the Minister in the course of the performance of his duties.

(3) The Minister shall publish a draft of the Code, or a draft of any amendments to the Code, in such manner as he considers appropriate; and after inviting representations from family mediators, take such representations into consideration before issuing or amending the Code.

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- (4) The Statutory Instruments Act 1977 does not apply to the Code.

Fees

17 The fee for an application for a licence or the renewal of a licence shall be prescribed under the Government Fees Act 1965.

Supplementary Matters

Confidentiality

18 (1) Except in so far as may be necessary for the performance of his duties under this Act, a member of the Council or a family mediator, as the case may be, shall preserve and aid in preserving confidentiality with regard to all matters relating to the affairs of the Council or of any person that may come to his knowledge in the course of the performance of his duties as a member of the Council or as a family mediator.

(2) A member of the Council who—

- (a) communicates to any person any matter relating to the affairs of the Council that may come to his knowledge in the course of the performance of his duties, other than is necessary for the performance of his duties; or
- (b) communicates to any person any matter relating to a person that may come to his knowledge in the course of the performance of his duties, other than is necessary for the performance of his duties,

commits an offence.

(3) A family mediator who communicates to any person any matter relating to a person that may come to his knowledge in the course of the performance of his duties, other than is necessary for the performance of his duties, commits an offence.

(4) No member of the Council or family mediator shall be required to produce any record or to divulge or communicate to any court any matter coming to his knowledge in the course of the performance of his duties under this Act, except on the direction of the court.

Offence

19 A person who commits an offence under section 18(2) or (3) is liable—

- (a) on summary conviction to a fine of \$5,000 or to imprisonment for a term of six months, or to both such fine and imprisonment; or
- (b) on conviction on indictment to a fine of \$10,000 or to imprisonment for a term of two years, or to both such fine and imprisonment.

Immunity

20 No proceedings shall lie against any member of the Council for anything done in the purported exercise of his duties under this Act, provided such acts were done in good faith.

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Transitional

21 (1) Every person who is a member of the Co-Parenting Mediation Council on the day section 10 comes into operation shall continue as a member of the Family Mediation Council until his term of appointment as a member of the Co-Parenting Mediation Council expires.

(2) Any matter under consideration by the Co-Parenting Mediation Council on the day this Act comes into operation shall be determined by the Family Mediation Council.

(3) Any person who—

(a) practises as a family mediator on the day this Act comes into operation; and

(b) applies for a licence in accordance with regulations made under section 15 not later than three months from the day on which those regulations come into operation,

may continue to practise as a family mediator until his application is determined by the Council.

Repeals

22 (1) The Children Amendment Act 2014 (which provided for co-parenting mediation) is repealed.

(2) Section 36GA of the Children Act 1998 is repealed.

Consequential and related amendments

23 (1) The Government Authorities (Fees) Act 1971 is amended in the First Schedule by inserting, in its proper alphabetical order, the words “Family Mediation Council”.

(2) The Government Fees Regulations 1976 is amended in the Schedule by inserting the following after Head 29—

“

Head 29A	
Family Mediation Act 2018	
(1) Applying for a family mediator licence	\$150
(2) Applying to renew a family mediator licence	\$100
(3) Fee for late application to renew a family mediator licence	\$50
(4) Requesting a certificate of professional standing in respect of a family mediator	\$25
(5) Requesting a duplicate of a family mediator licence	\$25
(6) Requesting cancellation of a family mediator licence	\$25

”.

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(3) The Minister may, by regulations subject to the negative resolution procedure, make such further consequential or related amendments to other enactments as the Minister considers necessary to give effect to this Act.

Commencement

24 The Act comes into operation on such day as the Minister may appoint by notice published in the Gazette, and different days may be appointed for different provisions of this Act.

SCHEDULE

(section 10(2))

FAMILY MEDIATION COUNCIL

1. The Family Mediation Council shall comprise five members, of which at least two members shall be men and at least two shall be women, appointed by the Minister as follows—

- (a) three persons who are qualified and experienced family mediators;
- (b) one person who is a member of the medical profession; and
- (c) one person who is qualified as a social worker.

2. The Permanent Secretary responsible for the Department of Child and Family Services or his nominee, shall be an additional, ex officio, member of the Council but shall not be entitled to vote.

3. Members of the Council shall hold office for such term as may be specified in their instruments of appointment, and on the initial appointment, the term of office shall be varied to ensure continuity in the management of the Council.

4. The Minister shall appoint a Chairman and a Deputy Chairman from among the members of the Council who shall serve at the Minister's pleasure.

5. Members are eligible for reappointment.

6. The Minister may declare the office of a member of the Council vacant if he is satisfied that the member—

- (a) is unable through mental or physical incapacity to perform the functions of his office;
- (b) has failed, without adequate cause, to attend three successive meetings of the Council; or
- (c) has otherwise become unable or unfit to perform his duties as a member.

7. A person appointed to fill a vacancy left by a member who did not complete his term of office may be appointed for the unexpired portion of that member's term and no longer, but an appointment to such a vacancy need not be made where the unexpired portion of the term is less than three months.

8. The Council may act notwithstanding any vacancy in its membership, and no act of the Council shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

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9. Three members of the Council shall form a quorum at any meeting.
10. Any question for decision by the Council shall be decided by a majority of the members present and voting; and each member shall have one vote, except that the Chairman or person acting as Chairman shall have a second vote if there is a tie.
11. The Council shall meet as often as may be necessary for it to carry out its functions under this Act, and in any event not less than once every quarter.
12. Where any matter is before the Council, a member of the Council may, with the leave of the Chairman, withdraw on the ground that he is personally acquainted with the facts of the case or for any other reason which the Chairman deems sufficient, and the Chairman may himself withdraw on any such ground.

FAMILY MEDIATION BILL 2018

EXPLANATORY MEMORANDUM

This Bill seeks to provide for mediation with respect to certain matters in family law proceedings, to establish a Family Mediation Council, to regulate persons who act as family mediators, and to make consequential and related amendments.

Clause 1 is self-explanatory.

Clause 2 is the interpretation section and includes definitions for “family”, “affected family member”, and “specified Act”. A “specified Act” is one of the family law Acts listed in clause 2, and includes any other Act not listed where the court determines that such an Act should apply in the proceeding presently before the court.

Clause 3 provides for the purpose and principles of the Act. The purpose of the Act is to facilitate disputes in certain family law proceedings by mediation. The principles that guide the court in its decision making are that the parents of a child provide value in the child’s upbringing, but the welfare of the child is the paramount consideration.

Clause 4 requires the court to determine whether or not the subject matter of the proceedings is suitable for mediation.

Clause 5 requires the court, where it has determined that the subject matter is suitable for mediation, to offer to the parties to the proceedings and any affected family member an opportunity to participate in mediation, and if accepted for there to be an assessment of those persons by a family mediator as to whether or not they are all suitable for mediation.

Clause 6 provides for a family mediator to inquire into certain matters when assessing the parties and any affected family members for mediation. Where, among other things, the family mediator has reasonable grounds to suspect physical, mental or drug abuse, he must determine that the persons are not suitable for mediation.

Clause 7 provides for the court to order mediation where the opinion of the family mediator is that the parties and any affected family member are suitable for mediation; and for the family mediator to provide the court with a report on the outcome of mediation and the terms of any agreement reached.

Clause 8 provides for an agreement reached by the parties and any affected family member, whether by way of mediation or not, to be made an order of the court; and for such order to be taken note of in any further or related proceedings under the specified Act, and by any person where a requirement or duty is imposed on him under a specified Act and the mediation order is relevant to that requirement or duty.

Clause 9 restricts access to the court’s records relating to mediation.

Clause 10 renames the Co-Parenting Mediation Council as the Family Mediation Council (“the Council”), and gives effect to the Schedule which sets out matters relating to the Council including the appointment of members, vacancies, and meetings.

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Clause 11 provides for the functions of the Council, which include the licensing and regulation of family mediators, maintaining a register of family mediators, and educating the public on matters relating to family mediation.

Clause 12 provides for the Minister to give general or policy directions to the Council.

Clause 13 requires the Council to submit annual reports to the Minister, and for the Minister to lay such reports before both Houses of the Legislature.

Clause 14 requires persons who practise as family mediators to be licensed by the Council, and for it to be an offence for persons to practice without a licence.

Clause 15 requires the Minister, after consulting with the Council, to make regulations subject to the negative resolution procedure, including fees that may be charged by family mediators for their services.

Clause 16 provides for the Minister, after consulting with the Council, to issue a Code of Practice which family mediators must take account of in the performance of their duties.

Clause 17 provides for fees in respect of an application for a licence or the renewal of a licence to be prescribed under the Government Fees Act 1965.

Clause 18 requires Council members and family mediators to preserve the confidentiality of any information that may come to their knowledge in the course of their duties, and for it to be an offence for a Council member or a family mediator to communicate such information to any person, other than is necessary for the performance of his duties.

Clause 19 creates an offence and penalties in respect of Council members and family mediators who contravene the requirement of confidentiality imposed under clause 18.

Clause 20 grants immunity to Council members for anything done in the purported exercise of their duties, provided the thing was done in good faith.

Clause 21 provides for transitional matters with respect to the Co-Parenting Mediation Council; and for persons who practise as family mediators to continue to do so without a licence, provided an application for a licence is made to the Council within three months of the coming into operation of Regulations made by the Minister.

Clause 22 provides for the repeal of the Children Amendment Act 2014 (which provided for co-parenting mediation), and section 36GA of the Children Act 1998 (which provided for the establishment of the Co-Parenting Mediation Council).

Clause 23 makes consequential amendments to (a) the Government Authorities (Fees) Act 1971 to provide for the payment of fees to members of the Family Mediation Council, and (b) the Government Fees Regulations 1976 for the prescription of application fees for a licence to practise as a family mediator. Clause 23 also provides for the Minister to make any further consequential or related amendments by Regulations subject to the negative resolution procedure.

Clause 24 provides for the Minister to bring the Act into operation by notice published in the Gazette, and for different provisions to come into operation on different days.