

# Family mediation

## NEGOTIATING A FAIR AGREEMENT

[Presentation](#)

[Family mediation](#)

[The role of the mediator](#)

[Who can be a family mediator?](#)

[Choice of a mediator](#)

[Free sessions](#)

[Information session](#)

[The unfolding of mediation](#)

[Court ordered mediation](#)

[Protecting your rights](#)

[The procedure following mediation](#)

[Where to call?](#)

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## Presentation

On September 1<sup>st</sup> 1997, a new law concerning family mediation came into force in Québec. This law allows **couples with children** -- whether legally married or common-law spouses -- to be provided with the services of a professional mediator during the negotiation and settlement of their application for separation, divorce, child custody, spousal or child support or for the review of an existing decision.

Spouses may benefit from these services in any of the three following situations.

### ***Situation A: Voluntary Mediation***

You and your spouse hope to reach an amicable settlement and wish to negotiate an agreement with the help of a mediator.

You may resort to mediation before instituting judicial proceedings or even during the proceedings.

### ***Situation B: Information Session***

**You and your spouse disagree** on one or more of the following issues:

- child custody;
- access rights;
- the amount of spousal or child support;
- the partition of family patrimony;
- other rights resulting from the marriage.

Before your case is heard by the court, you are **required** to attend an information session on mediation. This session may take place either before or after your application is submitted to the court. You may then choose to continue with the mediation process or to go before the court.

***Situation C: Mediation Ordered by the Court***

At a certain point during the examination of a contested application, the court may decide it is appropriate to order the spouses to undertake mediation.

**Family mediation**

Family mediation is a conflict resolution method whereby an impartial mediator who intervenes with the spouses to help them negotiate a fair and viable agreement, that meets the needs of each family member and is entered upon of their own free will.

**THREE PHASES OF THE MEDIATION PROCESS**

|                        |                                                |                 |                                 |                          |
|------------------------|------------------------------------------------|-----------------|---------------------------------|--------------------------|
| Phase 1<br>Assessment  | Assessment of the situation                    |                 |                                 |                          |
| Phase 2<br>Negotiation | Needs of the<br>parents and of the<br>children | List of options | Analysis of<br>options          | Choosing the<br>solution |
| Phase 3<br>Drafting    | Drafting of mediator's report                  |                 | Drafting of projected agreement |                          |

**The role of the mediator**

The mediator ensures that each spouse totally and freely communicates his or her needs to the other to allow for a fair and enlightened base for the negotiation. He also ensures that the children's needs are taken into consideration by the parents during the negotiation process.

Therefore, the mediator will not decide for you or offer any kind of advice. However, he may suggest that

you to seek the help of experts depending on the nature of the disagreement.

## Who can be a family mediator?

Only a certified mediator may act in the context of family mediation.

Five professional associations are authorized by the Gouvernement du Québec to certify their members:

- the Barreau du Québec;
- the Chambre des notaires du Québec;
- the Ordre professionnel des conseillers et conseillères d'orientation du Québec;
- the Ordre des psychologues du Québec;
- the Ordre professionnel des travailleurs sociaux du Québec.

Youth Protection Centres are also authorized to certify their employees.

## Choice of a mediator

You may choose between a mediator from the legal field (attorney or notary) and a mediator from the psychosocial field (psychologist, social worker, guidance counsellor or an employee of a Youth Protection Centre).

Take note! You are entitled to call on the mediator of your choice. However, in order to obtain this service free of charge, you must choose a mediator whose fee corresponds to the rate prescribed by law, which is \$95 per session.

If you choose a mediator who charges a different fee, you must assume all mediation costs.

## Free sessions

In the case of a couple with children, the Service de médiation familiale **will pay the mediator's fee for six sessions** (including the information session if applicable). However, if a decision is under **review**, the Service assumes the fee for only **three sessions** (including the information session if applicable).

The costs of any **additional sessions** needed by the couple to reach an agreement must be assumed by the couple. In such cases, the cost per session must not exceed \$95.

## Information session

The goal of this session is to provide information on the mediation process, its nature and objectives, its

potential unfolding, as well as on the role of the mediator and on the role you and your spouse will be playing in this context.

At the end of the information session, the couple decides whether to undertake mediation in order to reach an agreement, or to institute or continue legal proceedings.

It is up to you to choose from the following two options: a session for couples with the mediator of your choice, lasting approximately one hour and fifteen minutes, or a group session, lasting approximately one hour and a half.

### ***Session for Couples with the Mediator of your Choice***

You meet with the mediator of your choice together in his office so that he may provide you with all the necessary information. If you decide to go beyond the information session with this mediator, you may make the necessary arrangements with the latter. You may also continue with another mediator.

### ***Group Session***

If you cannot agree with your spouse on the session for couples or about the choice of a mediator, you must register for a group information session with the Service de médiation familiale at the courthouse of your judicial district.

At the conclusion of the information session, you will have the opportunity to select a mediator if you wish to do so.

Following the information session (as a couple or in a group), the mediator submits an attendance report to the Service de médiation familiale. You will receive a copy of this report. This report enables you to have your case heard by the court even if some issues are still in dispute.

### ***Exemption for a Serious Motive***

If you have valid reasons not to attend the information session, you must declare the existence of these reasons to the mediator of your choice during a meeting at the latter's office. These reasons may be, among other things:

- the inequality of the power relationship between yourself and your spouse;
- your disability or your physical or psychological condition;
- the great distance between your residence and that of your spouse's.

Despite the fact that you are under no obligation to reveal the nature of this motive to the mediator, the latter may, at your request, help you assess your situation relative to the nature of the information session and suggest potential alternative measures.

He then drafts a report informing the court of the declaration of a valid reason which has been submitted to him, which need not be disclosed. Spouses are then exempted from any other procedure related to their attending an information session, and the application will follow its course before the court. However, the court retains the discretion to order mediation at a later date during the proceedings.

A person for whom the information session was mandatory and who was absent without any valid reason may be ordered to pay all costs relating to the application that is submitted to the court.

## **The unfolding of mediation**

During your first mediation meeting, if you did not have the opportunity to attend an information session, the mediator provides some information on the process. He then helps you clarify and define your problems.

Then, the mediator establishes a work schedule with you for each of the forthcoming meetings; for instance, on one day you may discuss division of property and on another day, the financial support of the children.

A mediation session naturally implies the participation of both spouses and of at least one mediator, but a couple may prefer co-mediation, that is, the participation of two mediators.

With your consent, others may also join the session if the mediator deems their presence desirable as long as these persons are neither experts nor advisers.

However, you may always suspend the mediation process in order to consult your attorney or anyone else. You may also put an end to the process at any time. In fact, the mediator must put an end to the mediation when he believes it is inadvisable to continue the process.

At the end of the mediation, the mediator writes down the points on which you and your spouse have agreed. However, nothing that was said or written during the mediation will be revealed. Mediation sessions are confidential and their content may not be used as evidence in a court of law.

## **Court ordered mediation**

At any time during the proceedings involving a contested application, the court has the discretion to order the parties to undertake mediation. The spouses select the mediator and notify the court. If they do not, the Service de médiation familiale will appoint a mediator.

If the spouses have not undertaken mediation at the expiry of the 20-day period or if one or the other refuses to comply within this deadline, the mediator reports to the court and transmits a copy of the report to the parties involved and to their attorneys.

## Protecting your rights

If necessary, in order to allow you to proceed with the mediation while protecting your rights, the court may render, upon application by way of a motion and according to the conditions it so determines, any order to help protect your rights and those of your children during the mediation or during any period of time considered to be appropriate.

## The procedure following mediation

Once the mediation process is completed and the mediator has submitted his report to the Service de médiation familiale and handed you your agreement project, a few steps still need to be taken.

- If necessary, consult a legal adviser so that he may verify your agreement and perhaps put it in a legal form.
- Undertake proceeding to have your agreement ratified by the court or have it confirmed by the special clerk, if required.

The court or the court officer, as the case may be, makes sure that your agreement is in accordance with the law, that the calculation of the child support payments complies with the Act respecting the determination of child support payments or that any derogation to this Act is justified and reasonable; and that the interests of the parties and of the children are sufficiently protected.

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## Where to call?

You may obtain additional information on the mediation service by contacting the Service de médiation familiale, at the courthouse of your judicial district. You may also contact the Direction des communications of the Ministère de la Justice.

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To obtain the names of mediators, look up in your telephone directory or visit the Service de médiation familiale of your local courthouse where a list of mediators is posted.

You may also call the following organizations:

**Barreau du Québec**

(514) 954-3458

1 800 361-8495 (ext 458)

### **Chambre des notaires du Québec**

(514) 879-1793

1 800 263-1793

### **Ordre professionnel des conseillers et conseillères d'orientation du Québec**

(514) 737-4717

1 800 363-2643

### **Ordre des psychologues du Québec**

(514) 739-1223

1 800 561-1223

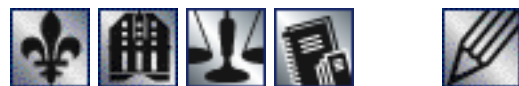
### **Ordre professionnel des travailleurs sociaux du Québec**

(514) 731-3925 (Collect calls accepted)

### **Youth Centres of:**

- Montreal: (514) 393-2285
  - Québec: (418) 649-3516
  - Laval: (450) 975-4150
  - Chaudière-Appalaches: (418) 837-9331
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**Note: In this text, the masculine form is used to designate either sex.**



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