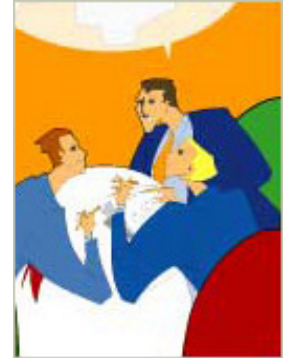




Mediation in civil and commercial matters

» Reaching a mediated settlement



Civil and commercial mediation is a process for resolving conflicts in which the parties agree to ask a third person, a mediator, to help them find a solution to their dispute. Mediation is a flexible process. The parties retain complete control over both the procedure and the final result. The mediator offers the parties private and confidential assistance to help find a way to resolve their differences, but does not impose a solution.

[The advantages of mediation](#)

[The parties at the center of the mediation process](#)

[Initiating mediation](#)

[Choosing a mediator](#)

[Mediation agreement](#)

[Mediator's fees](#)

[Mediation process](#)

• [For more information](#)

» The advantages of mediation

Mediation has many advantages when compared to a traditional court case. Both parties play an equal role, and mediation is faster, less expensive and confidential. It promotes reconciliation between the parties, enabling them to maintain a harmonious relationship and preserve their bond of trust.

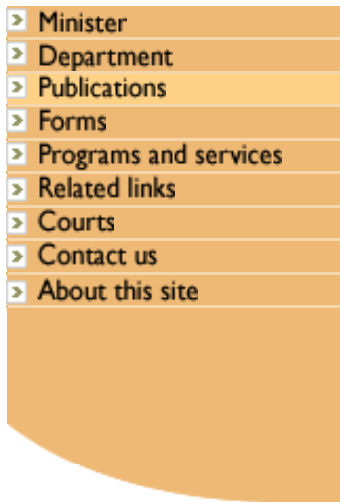
Quicker

Unlike a hearing before a court, the parties do not have to deal with the inevitable delays of a judicial process, since they set the pace for the meetings and the mediation schedule together with the mediator.

As a result, mediation can take as little as a few weeks, even a few days.

More economical

Mediation is generally more economical than a court case, particularly since the parties save the costs of preparing and filing legal documents and serving them on the other



party, as well as other costs connected with judicial proceedings.

Confidential

Mediation is confidential. This means that, apart from the parties involved and the mediator, no one else knows the facts of the dispute, how the meetings are conducted, and the outcome of the mediation. Confidentiality is a definite advantage, particularly in a business setting.

Ongoing relationship between the parties

In mediation, the focus is not on determining which party is in the right, but rather on finding a solution that is acceptable to both parties.

The mediator is responsible for establishing a positive climate that will encourage fruitful and constructive dialogue.

Unlike judicial proceedings, where the focus is generally on the points on which the parties are opposed and where each party attempts to convince the judge about the rightness of their claims, mediation is a flexible process which tends to focus on the points on which the parties are in agreement and, above all, their respective needs.

In mediation, the parties do not have to convince the mediator that their respective positions are right. The solutions explored during the mediation process take both parties' opinions into consideration and are designed to be mutually acceptable to both parties.

» **The parties at the center of the mediation process**

Even if they are represented by a solicitor or other advisor, the parties retain control of the mediation process.

The mediator focuses constantly on balance and equity, and must make sure that the parties understand the consequences of the agreements reached and the rights each party retains.

» **Initiating mediation**

Mediation may be initiated:

- on application by the parties;
- through the execution of a mediation clause in a contract;
- during a judicial proceeding, with the agreement of the parties.

Application by the parties

The two parties involved in a conflict can decide to submit their dispute to mediation; at this point they can either choose a mediator together, or contact a specialized organization to locate a mediator.

Competent professionals who have been trained as mediators can be of great help in explaining the process and advantages of mediation.

Execution of a mediation clause in a contract

The best way to provide for mediation is to include a mediation clause when the two parties enter into a contract.

Applying a mediation clause that is already contained in a contract is a popular way to

initiate mediation. This type of clause enables the parties to submit any dispute arising out of the contract to mediation. In this type of clause, the parties agree to submit their disputes to mediation rather than to a court.

During a judicial proceeding, with the agreement of the parties

The parties start mediation even if they are already involved in a court proceeding. The Court of Appeal, the Superior Court and the Québec Court have set up their own mediation service. The Code of Civil Procedure states that a judge can, when exercising authority as a mediator, preside over a dispute resolution conference. The purpose of the conference is similar to that of mediation, except that it is held as part of a case that is already before the court.



[Top](#)

» Choosing a mediator

It is important for the parties to agree on the choice of mediator. They can also ask a firm or a specialized organization to select a mediator, and either accept or reject the choice made.

The mediator must have the experience and training required to conduct mediation properly. Several professional orders and specialized organizations have lists of members who provide mediation services. It is a good idea to contact these orders and organizations directly before choosing a mediator.

» Mediation agreement

Once the mediator has been chosen, the parties sign a mediation agreement. This agreement generally includes a confidentiality clause and sets the fees for the mediator's services. It also states the objective of the mediation and provides a framework for the process.

» Mediator's fees

The mediator's fees depend on his or her training, experience and expertise. The mediator's remuneration is generally based on an hourly rate that is approved by the parties before mediation. Unless otherwise agreed, each of the parties will pay an equal share of the fees.

» Mediation process

During the first meeting, the mediator explains what mediation entails, and how the mediation process works. If a mediation agreement has not already been signed with the mediator, it is signed at this time.

Mediation may include two important elements: joint meetings and individual meetings.

During the joint meetings, both parties attend, along with the mediator, to present their version of the facts and explore various means for settling the dispute.

During individual meetings, each party in turn meets with the mediator alone:

- to discuss their perception of the dispute;
- to examine, confidentially, specific elements in the dispute;
- consider a proposal made by the other party.

Since the parties retain control over the mediation process, both parties must agree before individual meetings can take place.

In both joint and individual meetings, the mediator highlights the facts that may help to resolve the dispute, and explores various hypotheses that could lead to an agreement.

Successful mediation often ends with the signing of an agreement. This may take place at the end of the mediation process, or after the parties have had the agreement examined by a legal advisor or any other party of their choosing.

Unless indicated otherwise in the agreement, it remains confidential. To ensure that the agreement is respected, the parties will acknowledge that it is a transaction within the meaning of the Civil Code of Québec.

This brochure is based on the text, “La médiation, c’est quoi” found on the [Website](#)  of the Institut de médiation et d’arbitrage du Québec. The Ministère de la Justice would like to thank the IMAQ for authorizing the reproduction and adaptation of certain portions of that document.

For more information

Several professional orders, private organizations and individuals offer mediation services. They can be found by consulting the Internet under the headings “civil and commercial mediation”, “mediator”, “conflict resolution” or other similar key words.

The addresses and telephone numbers of Québec courthouses:

- [Courthouses](#)

The judicial district a municipality is located in:

- [Search for a judicial district](#)

Mediation and arbitration:

- [Institut de médiation et d'arbitrage du Québec website](#)  (In French)

The content of this document is strictly informative and has no legal value.

If you find some of the information difficult to understand, do not hesitate to [contact us](#).

Please note, however, that we cannot interpret the information to apply it to a specific situation.



Latest update: February 2, 2006

• [General information](#) • [Policies, Studies and Reports](#) • [Administrative documents](#) •
• [Publications for sale](#) •

Québec 

© [Gouvernement du Québec, 2003](#)



General Information

» Ministère de la Justice du Québec
Édifice [Louis-Philippe-Pigeon](#)
1200, route de l'Église, 6^e étage
Québec (Québec) G1V 4M1

Telephone: (418) 643-5140
Toll free: 1 866 536-5140
Email: communications.justice@justice.gouv.qc.ca

Please note: The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

Latest update: February 20, 2007

• [General information](#) • [Courthouses](#) • [Complaints Bureau](#) • [Public service directory](#) •

Québec



© [Gouvernement du Québec, 2003](#)

- > [Minister](#)
- > [Department](#)
- > [Publications](#)
- > [Forms](#)
- > [Programs and services](#)
- > [Related links](#)
- > [Courts](#)
- > [Contact us](#)
- > [About this site](#)