

**14.** Votes are taken by a show of hands or by voice.

A declaration by the chair that a resolution has been carried unanimously or by a majority, or has not been carried, is sufficient evidence of the fact.

**15.** A secret ballot shall be taken if required by the chair or requested by at least two members. It shall be taken in the manner as the chair directs, without any debate on the advisability of a vote by secret ballot.

A request for a secret ballot may be withdrawn by the requesting person or persons at any time before it is taken.

**16.** A proposed resolution may, exceptionally, be sent to the members by mail, fax, or other means.

Within the time specified by the secretary, each member must indicate his or her acceptance or rejection or, as the case may be, abstention, on the proposed resolution and sign it.

The time specified by the secretary may not be less than two juridical days unless all the members consent in writing to a shorter time.

If the secretary does not receive a member's vote within the specified time, the member is presumed to have abstained from voting.

The resolution is carried by a favourable vote of at least four members. It has the same value and effect as if carried at a duly called and regularly constituted sitting.

The resolution shall be entered in the minutes of the sitting that follows the date on which the resolution is signed, and the minutes shall indicate whether the resolution was carried unanimously or by a majority, or was not carried. In such a case, the chair's vote counts only in the event of a tie vote.

For the purposes of this section, Saturday is a non-juridical day.

**17.** Decisions of the committee to amend, replace or revoke this By-law require the vote of at least five members present.

**18.** A member in a situation where personal interest conflicts with his or her duties as a committee member must disclose the interest and withdraw from the sitting while the matter giving rise to the situation of conflict of interest is being discussed or voted on.

## DIVISION II

### SUBCOMMITTEES OF THE PENSION COMMITTEE

**19.** The pension committee may, for special purposes, form subcommittees composed in equal numbers of at least one representative of the government and at least one representative of elected municipal officers or of beneficiaries.

The members of the subcommittees shall be appointed by a resolution of the pension committee.

**20.** The quorum of a subcommittee is two members, each member representing one of the parties.

**21.** Decisions of the subcommittees require a majority vote of the members present. Decisions must be unanimous, however, if only two members are present.

**22.** The subcommittees shall report on their activities by presenting the record of their sittings to the pension committee.

The subcommittees shall make the recommendations they consider appropriate to the pension committee.

**23.** This By-law comes into force on the date of its approval by the Government.

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Gouvernement du Québec

**O.C. 972-2003, 17 September 2003**

Code of Civil Procedure  
(R.S.Q., c. C-25; 2002, c. 7)

#### Mediation of small claims

Regulation respecting the mediation of small claims

WHEREAS, under article 973 of the Code of Civil Procedure (R.S.Q., c. C-25), replaced by section 148 of chapter 7 of the Statutes of 2002, the clerk of the Court of Québec will refer the parties to the mediation service if the parties so wish;

WHEREAS, under paragraphs *b*, *c* and *d* of article 997 of the Code of Civil Procedure, also replaced by section 148, the Government may make regulations establishing the conditions that a mediator must satisfy to be certified, the rules and obligations applicable to the function of certified mediator, as well as the sanctions for non-compliance

with those rules and obligations, the tariff of fees payable to certified mediators by the mediation service and the maximum number of sessions for which a mediator may be paid in relation to the same action;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation respecting the mediation of small claims was published in the *Gazette officielle du Québec* of 20 November 2002 with a notice that the Regulation could be made upon the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation respecting the mediation of small claims, with amendments;

IT IS ORDERED, therefore, upon the recommendation of the Minister of Justice:

THAT the Regulation respecting the mediation of small claims, attached to this Order in Council, be made.

ANDRÉ DICAIRE,  
*Clerk of the Conseil exécutif*

## Regulation respecting the mediation of small claims

Code of Civil Procedure  
(R.S.Q., c. C-25, a. 997, pars. *b*, *c* and *d*;  
2002, c. 7, s. 148)

### DIVISION I CONDITIONS FOR CERTIFICATION

**1.** Advocates or notaries who wish to act as mediators in actions involving small claims must obtain an attestation of mediator certification from their professional order.

To be certified as a mediator, an advocate or notary must have completed a minimum of 16 hours of mediation training provided under the responsibility of the professional order and that pertains to

- (1) modes of alternative dispute resolution;
- (2) principled negotiation;
- (3) the mediation process;
- (4) helping parties to reach an agreement; and
- (5) the preparation of draft agreements.

**2.** Advocates and notaries certified as mediators by their professional order on 16 October 2003 are deemed to have received the training required under section 1.

**3.** Certified mediators shall ask their professional order to forward the following information to the Minister of Justice without delay:

- (1) the mediator's name;
- (2) the address of the mediator's professional domicile and, where applicable, identification of the borough in which the mediator's professional domicile is located;
- (3) the name of the judicial district in which the mediator practises;
- (4) the mediator's telephone numbers and, where applicable, fax number;
- (5) the mediator's e-mail address, where applicable;
- (6) the mediator's membership number; and
- (7) the date of the mediator's certification.

### DIVISION II DUTIES AND OBLIGATIONS

**4.** A mediation mandate is given to a mediator in an individual capacity and the mediator may under no circumstances transfer the mandate to another mediator.

In the case of an impediment, the mediator must inform the clerk who shall designate another mediator.

**5.** A mediator must hold a mediation session within 30 days after the date on which the mandate was received from the clerk.

The mediator must communicate with the parties so they may agree on a date and time for the mediation session.

The mediation session shall be held at the place determined by the mediator.

**6.** A mediator must at all times act impartially in the performance of the functions of mediator. The mediator must inform the clerk or, where applicable, the parties, of any cause for recusation.

**7.** In the absence of either or both of the parties, the mediator must wait a minimum of 30 minutes after the scheduled time for the mediation session to begin before cancelling the session.

Where a mediation session is cancelled because of the absence of either or both of the parties, the mediator must file a report with the office of the court stating that the session could not be held for that reason, and the parties are foreclosed from requesting a new mediation session.

**8.** During the mediation session, the mediator shall examine the claim and supporting documents. The mediator shall inquire about each party's allegations and arguments, provide them with any relevant information, generate alternative solutions to their situation and propose solutions where required. The mediator must create an atmosphere conducive to the amicable settlement of the conflict.

**9.** If the mediation ends the dispute, the mediator shall forward to the clerk a document signed by the parties confirming that the mediation session was held and inform the parties of their obligation to file with the office of the court either a copy of the agreement or the notice referred to in the third paragraph of article 973 of the Code of Civil Procedure (R.S.Q., c. C-25), replaced by section 148 of chapter 7 of the Statutes of 2002.

If the mediation does not end the dispute, the mediator must file the report referred to in the second paragraph of article 973 of the Code with the office of the Court of Québec.

**10.** If the mediator does not comply with the provisions of this Regulation, the clerk may terminate the mediator's mandate. Before doing so, the clerk shall notify the mediator in writing as prescribed by section 5 of the Act respecting administrative justice (R.S.Q., c. J-3) and allow the mediator at least 10 days to present observations.

If the mandate is terminated, the clerk must inform the parties and the mediator and designate another mediator.

**11.** On being notified by the professional order which certified a mediator that the mediator has, pursuant to the Professional Code (R.S.Q., c. C-26), been temporarily or permanently struck off the roll, had his or her permit revoked or the right to carry on professional activities restricted or suspended, the clerk must take notice of that fact and, if the mediator has been given a mandate, inform the parties and designate another mediator.

**12.** Mediators who cease performing mediation functions or practising their profession must ask their professional order to inform the Minister of Justice, without delay, of the cessation.

### DIVISION III TARIFF OF FEES

**13.** The fees payable to a mediator for the carrying out of a mediation mandate are \$115 per session if the mediation ends the dispute and \$95 per session if the mediation does not end the dispute. The mediator may not receive fees for more than one session in relation to the same case and may not claim any other remuneration from the parties.

**14.** If a report has been filed with the office of the court pursuant to section 7, the mediator shall receive \$50 in fees and may not claim any other remuneration from the parties.

**15.** Travel, research, communications and any other expenses, costs or charges shall be borne by the mediator. The mediator may not claim, directly or indirectly, payment or reimbursement of such expenses, costs or charges from the parties.

**16.** The fees provided for in this Regulation shall be indexed on 1 April each year on the basis of the rate of increase in the general Consumer Price Index for Canada for the 12-month period ending on 31 December of the preceding year, as determined by Statistics Canada.

The fees, thus indexed, shall be reduced to the nearest dollar where they contain a fraction of a dollar less than \$0.50 or increased to the nearest dollar where they contain a fraction of a dollar equal to or greater than \$0.50.

The Minister of Justice shall inform the public, through Part 1 of the *Gazette officielle du Québec* and by such other means as the Minister considers appropriate, of the indexing calculated under this section.

**17.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.