

M.O., 2015**Order of the Minister of Justice**

Code of Civil Procedure
(chapter C-25.01)

Regulation to establish a pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts

THE MINISTER OF JUSTICE,

CONSIDERING article 28 of the Act to establish the new Code of Civil Procedure (2014, chapter 1) which provides that, after considering the effects of the project on the rights of individuals and obtaining the agreement of the Chief Justice of Québec or the Chief Justice of the Superior Court or the Chief Judge of the Court of Québec, according to their jurisdiction, and after consulting the Barreau du Québec and, if applicable, the Chambre des notaires du Québec or the Chambre des huissiers de justice du Québec, the Minister of Justice, by regulation, may modify a rule of procedure, or introduce a new one, for a specified time not exceeding three years, for the purposes of a pilot project conducted in specified judicial districts;

CONSIDERING article 836 of the Act which provides that article 28 comes into force on the date of assent to the Act, in particular to allow the establishment of a pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts;

CONSIDERING the agreement of the Chief Judge of the Court of Québec;

CONSIDERING the opinions of the Barreau du Québec and the Chambre des notaires du Québec;

CONSIDERING the publication of a draft of the Regulation to establish a pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts in Part 2 of the *Gazette officielle du Québec* of 28 January 2015, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), with a notice that it could be made by the Minister on the expiry of 45 days following that publication;

CONSIDERING the expiry of the 45-day period;

CONSIDERING the comments received;

ORDERS AS FOLLOWS:

The Regulation to establish a pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts, attached to this Order, is hereby made with amendments.

STÉPHANIE VALLÉE
Minister of Justice

Regulation to establish a pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts

Code of Civil Procedure
(chapter C-25.01, ss. 28 and 836)

**CHAPTER 1
GENERAL**

1. A pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts is established for a period of 3 years in the judicial districts of Gatineau and Terrebonne.

Under the pilot project, parties to a case for the recovery of small claims arising out of consumer contracts introduced in or transferred to those districts during that period must participate in a mediation session before the case may be heard by the court. However, cases concerning fees arising from a contract concluded with a member of a professional order governed by the Professional Code (chapter C-26) are not subject to the pilot project.

For the purposes of this Regulation, a consumer contract is a contract defined in article 1384 of the Civil Code.

2. A party may, for a serious reason, be exempted from participating in a mandatory mediation session.

The following constitute a serious reason:

(1) the existence of an order preventing a party from being in the presence of another party;

(2) the fact that the travelling expenses related to the party's participation in the mediation session exceed the possible advantages;

(3) the fact that the parties have already participated in a mediation session for the same dispute.

3. Where a case is subject to mandatory mediation, the clerk so notifies the parties and informs them of their right to be exempted from it.

A party who wishes to be exempted from mandatory mediation must make an application in writing to the court not later than 20 days after being notified by the clerk that a case is subject to mediation. The clerk informs the other parties of the application; they then have 10 days to present observations in writing.

The application is decided by a judge in chambers. The decision must state the reasons on which it is based. The clerk informs the parties of the decision rendered.

4. Once a party is exempted, the mandatory mediation session does not take place and the case may be heard by the court.

5. The decision of the clerk regarding the obligation to participate in mandatory mediation may be revised by a judge in chambers.

The application is subject to the same rules as those prescribed for an application for exemption from mandatory mediation.

CHAPTER 2 MEDIATION PROCESS

DIVISION I MEDIATION MANDATES

6. The mediator is an advocate or a notary, certified to be a mediator by the professional order of which he or she is a member in accordance with the Regulation respecting the mediation of small claims (chapter C-25, r. 8).

7. The clerk draws up a list of the certified mediators who can act within the framework of the pilot project from among those who have their professional domicile in the district concerned and who have expressed an interest in participating in the project to their professional order.

8. When a case is ready to be heard, the clerk offers the mediation mandate to a mediator whose name appears on the list, offering mandates to all such mediators in turn.

The clerk may, however, offer two mandates simultaneously to the same mediator.

9. In no case may a mediator transfer his or her mandate to another mediator. If unable to carry out a mandate, the mediator so informs the clerk, who then offers it to another mediator.

10. On being notified by the professional order which certified a mediator that the mediator has, pursuant to the Professional Code (chapter 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.

11. If a mediator does not comply with the provisions of this Regulation, the clerk may end his or her mandate.

Before doing so, the clerk must notify the mediator in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the mediator at least 10 days to present observations.

If the clerk decides to end the mandate, he or she so informs the mediator and the parties. He or she then offers the mandate to another mediator.

12. The fees payable to a mediator to carry out a mandatory mediation mandate within the framework of the pilot project are paid by the Ministère de la Justice. The mediator may not claim any other remuneration from the parties.

The fees are the same as those payable to a mediator to carry out a mediation mandate under the Regulation respecting the mediation of small claims (chapter C-25, r. 8). However, despite sections 13 and 14 of the above-mentioned Regulation, if a mediator holds a second session pursuant to the second paragraph of section 15 of this Regulation, the mediator may also receive fees for that second session, in addition to those that he or she may receive for the cancelled session.

Travelling expenses, research fees, communication expenses, and any other fees, costs or expenses are paid by the mediator. He or she may not request directly or indirectly that the parties pay or reimburse such expenses.

DIVISION II ROLE AND DUTIES OF A MEDIATOR

13. A mediator helps the parties to engage in dialogue, clarify their views, define the issues in dispute, identify their needs and interests, explore solutions and reach, if possible, a mutually satisfactory agreement.

The mediator must be capable of acting impartially and diligently and in accordance with the requirements of good faith. He or she is required to draw the parties' attention to any conflict of interest or any situation that may be seen to create a conflict of interest or that may cast doubt on the mediator's impartiality. He or she must inform the clerk in writing of any such conflict or situation as soon as possible.

14. The mediator has a duty to treat the parties fairly, and must see that each party has an opportunity to argue its case.

The mediator may suspend a mediation session at any time, in the interests of the parties or of one of the parties. He or she may also end the mediation session if warranted by the circumstances, in particular if the mediator is convinced that the mediation process is doomed to failure or is likely, if continued, to cause serious prejudice to one of the parties.

15. In the absence of a party from a mandatory mediation session, the mediator must wait a minimum of 30 minutes after the scheduled time for the mediation session to begin before noting the default of the party and cancelling the session.

If the absence of a party is justified by a serious reason, the mediator may schedule a new session with the other parties' consent.

DIVISION III RIGHTS AND DUTIES OF THE PARTIES

16. The parties must participate in a mediation session to which they are summoned by the mediator.

They are required to participate in the process in good faith, to be transparent with each other, including as regards the information in their possession, and to co-operate actively in searching for a solution.

17. At a mandatory mediation session, the parties may, if all consent, even tacitly, bring persons who, while neither experts nor advisers, may make a contribution that is useful for the orderly progress of the mediation process and in resolving the dispute. The parties are required to ensure that the persons who have the authority to make a settlement agreement are present or can be reached in sufficient time to give their consent.

The mediator may, however, restrict the presence or participation of certain persons.

DIVISION IV CONFIDENTIALITY OF MEDIATION

18. The mediator and the mediation participants must preserve the confidentiality of anything said, written or done during a mandatory mediation process, subject to any agreement between them on the matter or to any special provisions of the law.

The mediator or the parties may provide information for research, teaching or statistical purposes or in connection with an evaluation of the pilot project on mandatory mediation and its results without it being a breach of the mediator or the parties' duty of confidentiality, provided no personal information is revealed.

19. The mediator and mediation participants cannot be compelled, in arbitration, administrative or judicial proceedings, whether related or unrelated to the dispute, to disclose anything they hear or learn in the course of the mediation process. Nor can the mediator and mediation participants be compelled to produce a document prepared or obtained in the course of the mediation process, unless the law requires its disclosure, a person's life, safety or personal integrity is at stake or its disclosure is necessary for the mediator to be able to defend against a claim of professional misconduct. No information given or statement made in the course of the mediation process may be admitted in evidence in such proceedings.

20. Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in a mediation record, or the right to object to the use of a document in the course of a mediation process on the grounds that it may contain personal information.

DIVISION V CONDUCT OF MEDIATION

21. The mediator must hold a mandatory mediation session within 30 days following the date on which written confirmation of his or her mandate is given by the clerk.

Where the mandatory mediation session has not been held within that period, the clerk asks the mediator to explain the reasons for the delay. If the reasons justify it, the clerk may give an extension of 15 days. Failing that, the mandate is withdrawn from the mediator and offered to another mediator.

22. The mediator communicates with the parties to agree on a date and time for the mediation session.

A party's failure to agree on the moment such session is to be held is a failure to participate to the mediation process.

23. The mediation session is held at the place determined by the mediator.

24. Before starting the mediation process, the mediator informs the parties of a mediator's role and duties, and determines with them the rules applicable to and the length of the mediation process.

25. The mediator may communicate with each party separately, but in that case is required to inform the parties.

No information relevant to the mediation received from a party may be disclosed by the mediator, without that party's consent, to the other party.

DIVISION VI **FAILURE OF A PARTY TO PARTICIPATE** **IN MEDIATION**

26. Where the mediator notes the absence of a party at a mandatory mediation session or the failure of a party to agree on the moment such a session is to be held, the mediator files with the court office a report stating that it was impossible to proceed with the mandatory mediation and identifying the faulty party.

The case may then be heard by the court.

27. The court may penalize a party's failure to participate in mandatory mediation as noted by the mediator.

The court may condemn the faulty party to pay the legal costs, namely the court costs, including witness indemnities and allowances and any expert fees, where applicable. The court may also condemn the party to pay damages to the other parties, to compensate any loss and expenditure incurred because of their participation in the mandatory mediation session. Lastly, the court may also, if the faulty party is the creditor, reduce or cancel the interest payable to that party.

Expert fees include the costs related to the drafting of the report and, if applicable, preparing testimony, and remuneration for the time spent testifying and, to the extent useful, attending the trial.

CHAPTER 3 **RESULTS OF MEDIATION**

28. If the mandatory mediation ends the dispute, the mediator sends to the clerk, within 10 days of the mediation session, a document attesting that the mandatory mediation session was held, signed by the parties.

The parties file with the court office either a notice that the case has been settled or the signed settlement agreement.

29. If the mandatory mediation does not end the dispute, the mediator sends to the clerk, within 10 days of the mediation session, a report giving an account of the facts, the positions of the parties and the questions of law raised.

The case may then be heard by the court.

CHAPTER 4 **TRANSITORY AND FINAL**

30. In the judicial districts of Gatineau and Terrebonne, for the duration of the pilot project, despite any agreement to the contrary, the competent territorial jurisdiction to recover small claims arising from a consumer contract is that of the domicile or residence of the consumer, whether the consumer is the plaintiff or the defendant.

31. The Minister of Justice may, at all times, suspend, in whole or in part, the application of the pilot project for the period the Minister determines. The Minister then gives notice of it on the website of the Ministère de la Justice.

32. For the purposes of the pilot project, the provisions of the Regulation respecting the mediation of small claims (chapter C-25, r. 8) are suppletive provisions, to the extent that they are not inconsistent with this Regulation.

33. This Regulation comes into force on May 15, 2015
102128

M.O., 2015-05

Order number V-1.1-2015-05 of the Minister **of Finance, April 16, 2015**

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 45-106 respecting prospectus and registration exemptions

WHEREAS subparagraphs 1, 3, 6, 8, 11, 11.1, 14 and 34 of section 331.1 of the Securities Act (chapter V-1.1) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act provide that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (chapter R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;