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Ordre des psychologues  
du Québec

Ordre des travailleurs sociaux  
et des thérapeutes conjugaux et  
familiaux du Québec

# STANDARDS OF PRACTICE IN FAMILY MEDIATION

## NOTICE

The new *Code of Civil Procedure* largely includes the contents of the guide to standards developed by the COAMF more than 15 years ago, providing a clear legal framework for family mediation.

For this reason, the COAMF has decided to proceed with a complete review of its *Standards of Practice in Family Mediation* so that the document will reflect, both in form and in content, the entirely new philosophy conveyed by the *Code of Civil Procedure*.

This edition of the guide has been put together to give family mediators a concordance tool for the new *Code of Civil Procedure*.

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WITH OUR THANKS TO THE PROFESSIONALS WHO HAVE  
SUCCESSIVELY WORKED ON THE DIFFERENT VERSIONS

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# TABLE OF CONTENTS

<b>PREAMBLE</b> .....	<b>1</b>
HISTORY OF FAMILY MEDIATION .....	1
COAMF OBJECTIVES .....	3
LEGISLATION ON FAMILY MEDIATION .....	4
<b>INTRODUCTION</b> .....	<b>5</b>
STANDARDS OF PRACTICE OBJECTIVES .....	5
<b>I - NORMS AND IMPACT OF STANDARDS OF PRACTICE</b> .....	<b>5</b>
1. STATUS OF STANDARDS OF PRACTICE .....	5
2. APPLICATION FIELD OF THE STANDARDS OF PRACTICE .....	6
3. DISTRIBUTION AND AVAILABILITY OF STANDARDS OF PRACTICE .....	6
<b>II - PRACTICE STANDARDS</b> .....	<b>6</b>
<b>SECTION 1 – GENERAL FRAMEWORK OF FAMILY MEDIATION</b> .....	<b>6</b>
1.1 DEFINITION OF FAMILY MEDIATION .....	6
1.2 OBJECTIVES OF FAMILY MEDIATION .....	7
1.3 DEFINITION OF PARTIES .....	7
1.4 THE ROLE OF SPOUSES/PARENTS .....	7
1.5 ROLE OF MEDIATOR .....	8
<b>SECTION 2 - FUNDAMENTAL PRINCIPLES OF FAMILY MEDIATION</b> .....	<b>8</b>
2.1 OBLIGATION OF IMPARTIALITY FOR THE MEDIATOR.....	8
A) <i>PRINCIPLE</i> .....	8
B) <i>EXCEPTIONS</i> .....	9
2.2 OBLIGATION OF CONFIDENTIALITY FOR THE MEDIATOR .....	10
A) <i>PRINCIPLE</i> .....	10
B) <i>EXCEPTIONS</i> .....	11
<b>SECTION 3 - RELATIONS BETWEEN SPOUSES/PARENTS</b> .....	<b>11</b>
3.1 CO-MEDIATION .....	11
3.2 SEQUENTIAL MEDIATION .....	11
3.3 DISTANCE MEDIATION.....	11
3.4 INDIVIDUAL MEETINGS AND COMMUNICATIONS WITH ANY OF THE PARTIES.....	11
3.5 ATTORNEY OF THE SPOUSES/PARENTS.....	12
3.6 IMPLICATION OF THIRD PARTIES IN THE FILE .....	12
<b>SECTION 4 - DUTIES OF THE MEDIATOR TOWARD THE MEDIATION PROCESS</b> .....	<b>12</b>
4.1 GENERAL DISPOSITIONS.....	12
4.2 INITIAL MEETING.....	14
4.3 DURING MEDIATION .....	15
4.4 INTERRUPTION OF THE PROCESS .....	17
4.5 END OF THE MEDIATION .....	18
4.6 AFTER THE MEDIATION .....	18
4.7 REMUNERATION OF THE MEDIATOR.....	20
4.8 DISCLOSING THE MEDIATION FEES.....	20

<b>SECTION 5 - DOMESTIC VIOLENCE .....</b>	<b>20</b>
5.1 GUIDING PRINCIPLES.....	20
5.2 DUTIES AND OBLIGATIONS .....	21
5.3 DETECTION .....	21
5.4 INTERVENTION.....	21
5.5 REFERRALS .....	22
<b>SECTION 6 - MEDIATION CONTRACT.....</b>	<b>22</b>
6.1 CONTENTS OF THE MEDIATION CONTRACT .....	22
<b>SECTION 7 - SUMMARY OF MEDIATED AGREEMENTS .....</b>	<b>22</b>
7.1 THE NATURE AND OBJECTIVE OF THE SUMMARY OF MEDIATED AGREEMENTS .....	22
7.2 FORM AND CONTENT OF THE SUMMARY OF MEDIATED AGREEMENTS .....	23
<b>SECTION 8 - FILE MAINTENANCE .....</b>	<b>24</b>
8.1 PREMISE .....	24
8.2 PRIMACY OF REGULATIONS CONCERNING FILE MAINTENANCE.....	24
8.3 RULES RELATIVE TO THE MAINTENANCE OF MEDIATION FILES .....	24
8.4 CONSERVATION/DESTRUCTION .....	25
<b>SECTION 9 - SUPERVISION IN MEDIATION .....</b>	<b>25</b>
9.1 NATURE OF SUPERVISION IN FAMILY MEDIATION .....	25
A) DEFINITION OF SUPERVISION .....	25
B) OBJECTIVES OF SUPERVISION .....	25
9.2 ACKNOWLEDGEMENT OF MEDIATION SUPERVISORS .....	25
9.3 SUPERVISION SESSIONS .....	25
A) CONTENT AND DURATION .....	25
B) MODALITIES OF SUPERVISION .....	26
C) TYPES OF SUPERVISION.....	26
D) SUPERVISION FILE .....	26
9.4 SUPERVISION CONTRACT.....	26
A) CHOICE OF SUPERVISORS.....	26
B) CONTENTS OF THE SUPERVISION CONTRACT .....	27
C) CONFIDENTIALITY OF SUPERVISION FILES .....	27
<b>SECTION 10 - PUBLIC DECLARATIONS AND PUBLICITY.....</b>	<b>27</b>
10.1 PUBLIC DECLARATIONS.....	27
10.2 PUBLICITY .....	27
<b>SECTION 11 - DEVELOPMENT OF FAMILY MEDIATION .....</b>	<b>27</b>
<b>ANNEX 1 (Mediation Contract Model) .....</b>	<b>28</b>
<b>Addendum to the Mediation Contract .....</b>	<b>32</b>
<b>ANNEX 2 (Warning Model) .....</b>	<b>34</b>
<b>INDEX .....</b>	<b>35</b>

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## PREAMBLE

### History of Family Mediation

As a private form of prevention and dispute resolution, mediation is a practice that has become more extensive. It is a practice that has been more and more accepted, respected and even sought by the public. This method applies itself to legal disputes as well as to administrative and interpersonal conflicts and is particularly suitable for dispute settlements surrounding a couple's separation and family restructuring. Family mediation regroups professionals from various backgrounds and takes on a multi-disciplinary character.

The amendments made to the *Code of Civil Procedure* since January 1, 2016, notably sections 1 to 7, mark a major milestone in the development of mediation and other private-party techniques for preventing and resolving disputes. More than ever, the parties need to consider these options before initiating legal procedures.

#### Excerpt from the preliminary provision in the *Code of Civil Procedure*

“This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role. It is also designed to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, the exercise of the parties' rights in a spirit of co-operation and balance, and respect for those involved in the administration of justice.”

Some important dates related to the origins of family mediation in Quebec:

- 1981 Institution of the first family mediation service at the Superior Court of Quebec in Montreal, which became permanent in 1984.
- 1984 Creation of the family mediation service in the city of Quebec.
- 1985 Creation of the Family Mediation Association of Quebec (FMAQ) which regroups on a voluntary basis different professionals who work in the mediation field.
- 1986 The Divorce Act comes into force (June 1st, 1986) and makes reference for the first time to mediation (sec. 9).  
Modification of Rules of Practice of the Superior Court of Quebec on family matters regarding the custody and access to children. The objective of this modification is to encourage mediation with the consent of the parties (1986, 118 G.O. II, 822).
- 1988 Adoption of an informal professional code of ethics by the Family Mediation Association of Quebec (FMAQ).



- 1993 Adoption of the Law Modifying the *Code of Civil Procedure* Regarding Family Mediation (L.Q. 1993, c.1) which introduces in the Code the family mediation regulations (partial implementation).  
Adoption of a statutory order by the Quebec government regarding the designation of certifying organizations in family mediation. This statutory law recognized six certifying organizations:
    - Barreau du Québec;
    - Chambre des notaires du Québec;
    - Ordre des conseillers et conseillères d'orientation du Québec;
    - Ordre professionnel des travailleurs sociaux (now Ordre des travailleurs sociaux et thérapeutes conjugaux et familiaux du Québec);
    - Ordre des psychologues du Québec;
    - Each of the establishments which operates a Centre de protection de l'enfance et de la jeunesse established according to the Social Services and Health Services Law (R.S.Q., c.S-4.2).
  - 1994 April 13<sup>th</sup> 1994; the accrediting organizations designated in the regulation and the Family Mediation Association of Quebec as observers, signed a protocol creating an inter-professional committee namely, the Committee of Accrediting Organizations in Family Mediation (COAMF).
  - 1997 Adoption of Bill 68 (a new support payment scale) and of Bill 65 (free family mediation sessions). Modification and coming into force of the entire regulation modifying the *Code of Civil Procedure* regarding family mediation.
  - 1998 Adoption of a Standards of Practice in Family Mediation (July 1<sup>st</sup> 1998) approved by all the accrediting organizations.
  - 2011 First edition of Quebec Family Mediation Day. The government has declared the first Wednesday in February to be Quebec Family Mediation Day, an annual event. The objective of holding this day is to raise public awareness of family mediation and provide information on the benefits of mediation, as well as highlighting the work of family mediation professionals in Quebec.
  - 2012 Adoption of the Law Modifying the *Code of Civil Procedure* regarding family mediation (L.Q. 1993, c.1). Adoption of the Quebec government decree designating the Ordre des psychoéducateurs et psychoéducatrices du Québec as an accrediting organization.
  - 2016 The Act to establish the new *Code of Civil Procedure* (RSQ, chapter C-25.01) came into effect on January 1, 2016. Since that date, the *Code of Civil Procedure* has stipulated that when there is a dispute between parties that concerns the interests of the parties and their children, the parties must participate in a free information session on parenting after a breakup and mediation before the court can hear their case (sec. 417, *Code of Civil Procedure*).
- The coming into force of the *Family Mediation Regulation* that described the requirements to obtain a family mediation accreditation. (Decree 1686-93, December 1<sup>st</sup> 1993).

## OBJECTIVES OF THE COAMF

1. To establish a collaboration regarding mediator training, mediation promotion, the Professional Code of Ethics, the general development of family mediation in Quebec and to make recommendations regarding these matters.
2. To insure a collaborative interpretation and application of the legislation in family mediation matters especially the conditions and process of accreditation.

According to Quebec Justice Ministry data (2013-2014) :

- » 14 897 couples have benefited from free family mediation sessions;
- » 80 % of these couples reached an agreement;
- » Approximately two thirds of these couples began the mediation before going in the Court system.

Also, according to Quebec Justice Ministry data, on September 9<sup>th</sup> 2016, there were 1108 accredited mediators in Quebec:

- » 70% were legal counsels: 582 lawyers and 190 notaries;
- » 30% came from the social sciences:
  - 213 social workers;
  - 74 psychologists;
  - 23 guidance counselors;
  - 19 psychoeducators
  - 7 in youth centers.

### **Legislation on family mediation**

The family mediation procedure is spelled out in sections 417 to 424 and 605 to 619 of the *Code of Civil Procedure* (RSQ, chapter C-25.01). These public policy provisions are imperative. All family mediators also need to be aware of the *Preliminary provision of the Code* as well as provisions 1 to 7 and 454 of the *Code of Civil Procedure* (these provisions are attached as an appendix to this guide).

The *Regulation respecting family mediation* (RSQ, C-25.01, r. 0.7.) sets conditions for certification, supervision and fees in government-subsidized family mediation.

Finally, topics addressed in family mediation, such as basic conditions that apply, may be found in the *Civil Code of Quebec*, the *Code of Civil Procedure*, the *Divorce Act* and other related legislation.

All family mediators are responsible for updating their knowledge of legislation and jurisprudence.

Only certified mediators may offer these family mediation services (sec. 616, *Code of Civil Procedure*).

The provisions of the *Code of Civil Procedure* are designed to encourage partners to make use of mediation in family matters and to simplify the judgment process when the spouses/parents come to an agreement. They also provide for the court to order mediation during the proceedings should the judge deem it appropriate to do so (sec. 417, *Code of Civil Procedure*).

The *Code of Civil Procedure* stipulates that when there is a dispute between the parties that concerns the interests of the parties and their children, the parties must participate in a free information session on parenting after a breakup and mediation before the court can hear their case (sec. 417, *Code of Civil Procedure*).

However, exemption measures are available for those who have filed a statement with the officer of the court attesting that they have already participated in such an information session in connection with a prior dispute or confirming that they have gone to a victim assistance organization recognized by the Minister of Justice for help as a victim of domestic violence.

Note that in any such case, the court may, in the children's interests, order participation in such an information session (sec. 417 and 616 of the *Code of Civil Procedure*).

**The designated organizations for mediator accreditation are:**

- » Barreau du Québec;
- » Chambre des notaires du Québec;
- » Ordre des conseillers et conseillères d'orientation du Québec;
- » Ordre des psychologues du Québec;
- » l'Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec;
- » Ordre des psychoéducateurs et psychoéducatrices du Québec.
- » All institutions that operate a child and youth protection centre under the Act respecting health services and social services (RSQ, chapter S-4.2) and meet the criteria for membership in one of the professional orders listed above.

## INTRODUCTION

### Standards of Practice Objectives

In order to insure high practice standards as well as harmonization in the quality of family mediation practices in Quebec it seems necessary to establish common standards of practice. Indeed, the professional code of ethics of the different groups involved do not necessarily possess regulations specifically concerning family mediation practice. It is

therefore important to supply practitioners with written guidelines on family mediation practices, not only concerning the process but also the results, thereby supplying the necessary tools allowing mediators to do their work in a conscientious, diligent and effective way.

## I - NORMS AND IMPACT OF STANDARDS OF PRACTICE

### 1. Status of Standards of Practice

This guide helps complete the legislation regulating each practitioner in family mediation. It goes without saying that the regulations in the *Code of Civil Procedure*, in the laws particular to each profession respectively, in the various professional codes of ethics as well as other regulations, such as file maintenance, prevail on the *Standards of Practice in Family Mediation*.

Every day professionals must respect certain legal dispositions regardless of their field of practice. The legislator cannot anticipate all the details of a given situation. Therefore, the existence of a complementary document without having the force of law nonetheless guides the professional practitioner. This is the case with the Standards of Practice in Family Mediation which constitutes a type of auto-regulation specific to this field.

Practice standards specify the applicable methods to the functions and tasks that constitute the professional aspect of family mediation. However, specialists agree that in the field of legal practice auto-regulation is tremendously important. For example; in the absence of applicable law or regulation concerning a legal dispute the judge will try to know the standard that is applicable and will render his judgment accordingly

(Trudel, Pierre: *Les effets juridiques de l'autoréglementation*, Revue de droit de l'Université de Sherbrooke, 1989, 19).

It being simpler to adopt a standard faster than a law or a regulation, it is possible to adjust quickly to the evolution of the professional practice. Furthermore, this way appeared more appropriate to adopt common standards for a multi-disciplinary field of practice such as family mediation.

The present standards of practice have been updated by a working group appointed by the COAMF. First, these standards of practice were submitted for adoption to the COAMF and then by the decision-making authorities of each of the certifying organizations. As such, they serve to specify and complete the professional legislation in training, professional inspection and discipline in the particular context of family mediation.

## 2. Application Field of the Standards of Practice

These standards regulate the relations between mediators, co-mediators and supervisors, their clients, their colleagues and court officers, third parties in the file and the general public.

These standards aim to optimize the quality of the services offered to the spouses/parents helping them to negotiate a fair agreement for themselves and their children by obtaining all the required information at each stage of the mediation process.

## 3. Distribution and Availability of Standards of Practice

The mediator must inform his clients of the existence of the Standards of Practice in Family Mediation.

In their office, all mediators must have an available copy of the *Standards of Practice in Family Mediation* for their clients to read. If asked, the mediator must give a written copy of the Guide to the client or provide him with the Web site where a copy can be obtained.

# II - PRACTICE STANDARDS

## SECTION 1 - GENERAL FRAMEWORK OF FAMILY MEDIATION

### 1.1 Definition of family mediation

Family mediation is a means of preventing and settling disputes whereby an impartial third party, duly certified under the *Regulation respecting family mediation* (RSQ, c.25.01, r. 0.7), intervenes in the conflict with the permission of the spouses/parents and helps them to engage in dialogue, clarify their views, discuss the dispute, identify their needs and interests, explore solutions and, if possible, reach a mutually satisfactory agreement (sec. 605 and 619, *Code of Civil Procedure*).

Mediation is a different and separate activity from arbitration, adjudication, assessment, counselling or therapy, although some of these practices may be used, as well as other private-party ways of preventing and resolving disputes.

Mediation is based on communication principles, negotiation, providing information and problem solving. It is a flexible process that takes into account:

- the needs and interests of the spouses/parents and children;
- the will and the involvement of the spouses/parents in finding solutions;
- knowledge of the law applicable in family matters;
- fairness;
- revealing of any relevant information by the spouses/parents;
- respect of the spouses/parents, the mediation process, their private life, and of confidentiality.

## 1.2 Objectives of Family Mediation

The goal of family mediation is to help the parties to engage in dialogue, clarify their views, discuss the dispute, identify their needs and interests, explore solutions and, if possible, reach a mutually satisfactory agreement (sec. 605 par. 2, *Code of Civil Procedure*).

Family mediation is designed to help the spouses/parents to identify and resolve sources of conflict. Guided by the mediator, they hold constructive discussions and negotiations to move towards the preparation of an agreement that will meet both the spouses'/parents' needs and the needs of the children.

Since the agreement between the spouses/parents needs to be reached by informed consent, the mediator must see that the parties understand the agreement (sec. 613 par. 2, *Code of Civil Procedure*).

At all times the mediator has the responsibility to point, at each step, out to the spouses/parents all the inequities in their agreement.

At no time may the mediator force, the spouses/parents to submit to an agreement or to make any decision on behalf of one party or the other. Moreover, any form of arbitration in a family matter is strictly forbidden in Quebec.

The mediator helps the spouses/parents to voluntarily reach with a complete knowledge of the facts a viable agreement respecting every member of the family. If the mediator considers that a proposed settlement agreement is likely to lead to a dispute in the future or cause prejudice to one of the parties or to the children, the mediator is required to invite the parties to remedy the situation and, if necessary, to seek advice from a third person (sec. 618, *Code of Civil Procedure*). If necessary, the mediator will suspend the mediation process so that the spouses/parents

can obtain, outside mediation, the advice they need to achieve these objectives. If convinced that the possibility of prejudice cannot be eliminated, the mediator may put an end to the mediation process. The mediator may suspend the mediation process at any time in the interests of the parties or one of the parties (sec. 610 par. 2, *Code of Civil Procedure*).

## 1.3 Definition of Parties

Any member of the family who has signed the mediation consent agreement is considered as a party to family mediation. For the purposes of this Guide children are considered on the same level as the spouses/parents regarding the question of professional secrecy. Any person intervening in a mediation process must sign a written commitment, submitting themselves to the same confidentiality as the spouses/parents.

## 1.4 Role of Spouses/Parents

Whatever the context may be in mediation, decision-making always remains under the authority of the spouses/parents themselves, within the premise that the mediator must make sure the agreement is fair.

## 1.5 Role of Mediator

Before starting the mediation process, the mediator informs the parties of the mediator's role and duties, and determines with them the rules applicable to and the length of the mediation process (sec. 609, *Code of Civil Procedure*).

The role of the mediator includes but is not limited to:

1. helping the spouses/parents by clarifying the issues and objectives of the mediation;
2. reducing communication obstacles;
3. helping to identify the sources of conflicts;
4. exploring different possible solutions in order to help the spouses/parents to find an agreement suited to their situation;
5. helping spouses/parents in assessing the probable consequences of the different contemplated options;
6. informing the spouses/parents about the applicable legal regulations.

The first responsibility for problem solving rests with the spouses/parents. Since the responsibility of the mediator is to help them reach a fair agreement ensuing from a free and enlightened consent, he can help the spouses/parents to develop options for discussion and assessment. All the decisions must be made on a voluntary basis by the spouses/parents.

The mediator must inform the spouses/parents of section 454 of the *Code of Civil Procedure*. The mediator informs the parties that the court may make changes to reflect the interests of the children or either of the spouses. The mediator's decision may also be postponed until the parties have made changes to the agreement or draft agreement or have refused to give their approval, in which case the proceedings will continue.

## SECTION 2 - FUNDAMENTAL PRINCIPLES OF FAMILY MEDIATION

### 2.1 Obligation of Impartiality for the Mediator

#### a) Principle

The family mediator must be seen as impartial and make sure that he preserves the trust of both spouses/parents throughout the mediation process. Impartiality means that the mediator has a duty to treat the parties fairly and must see that each party has an opportunity to argue its case, free of any favouritism, prejudice or conflict of interest on the part of each spouse/parent in their statements, attitudes and actions (sec. 610, par. 1, *Code of Civil Procedure*).

The mediator must be aware that previous or subsequent professional relationships with clients outside of mediation might compromise his ability to act as an impartial mediator.

Social or professional relationships with the spouses/parents or third parties related to the conflict might compromise the impartiality of the mediator.

The mediator must declare any prejudice he might have concerning questions being analyzed in mediation and of any circumstances that may create or constitute a real or apparent conflict of interest. The mediator 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 (sec. 605 par. 3, *Code of Civil Procedure*). These revelations must be made as soon as the mediator realizes that the possibility of a prejudice may surface or that a conflict of interest might arise.

The mediator must reveal to the spouses/parents any previous or actual personal or professional relationship with one of them including a third party (a physical or moral person) who could be directly affected by the result of the mediation and who could be perceived as causing a conflict of interest or could interfere with the impartiality of the mediator. As much as possible, the mediator does the same with any relationship of a similar nature involving persons within his sphere of practice. The mediator cannot proceed to mediate unless all previous or subsequent relationships have been discussed and the spouses/parents have been informed of the possible consequences. That the role of the mediator has been clarified in order to make the distinction of his role in previous relationships and that all parties consent freely to the mediation with full knowledge of all the facts and his professional code of ethics allows it.

The mediation contract to be signed must mention any relationship the mediator may have with the spouses/parents.

The mediator will refrain himself from any activity that could create a conflict of interest. He will not establish with his clients any relationship that could interfere with his professional judgment or increase in any way the risk that he exploits his clients. Among other things the mediator will not take charge of cases involving close friends, relatives or people who are part of his immediate working environment.

The fact that one of the spouses/parents or both of them think that the mediator is partial does not force him to remove his services; however, he should, given the circumstances, remind both spouses/parents, of their right to end the mediation (sec. 614, *Code of Civil Procedure*) and, if necessary, he may end the mediation himself (sec. 610, al. 2, *Code of Civil Procedure*).

During the mediation, the mediator must not provide any other professional services for one spouse/parent or the other, including a third party (moral or physical person) who would be directly affected by the results of the mediation.

During the mediation, a mediator must make sure that none of the individuals from his professional practice provides professional services to one spouse/parent or the other, including a third party (moral or physical person) who would be directly affected by the results of the mediation, on questions emerging from the mediation or having been the object of discussions unless:

1. he informs the parents/spouses beforehand of his involvement and that they freely consent to this professional relationship in writing and with full knowledge of the facts (sec. 605, al. 3, *Code of Civil Procedure*);
2. he makes sure that the involved professionals' professional codes of ethics do not anticipate any restrictions to this effect.

#### **b) Exceptions**

Despite the mediator's duty of impartiality, if the mediator considers that a proposed settlement agreement is likely to lead to a dispute in the future or cause prejudice to one of the parties or to the children, the mediator is required to invite the parties to remedy the situation and, if necessary, to seek advice from a third person. If convinced that the possibility of prejudice cannot be eliminated, the mediator may put an end to the mediation process (sec. 618, *Code of Civil Procedure*).



## 2.2 Obligation of Confidentiality for the Mediator

### a) Principle

The mediator will not reveal, communicate nor transmit any information obtained during the mediation to anyone other than the spouses/parents without their written consent and in respect to the regulation dictated by the *Code of Civil Procedure*. The mediator must preserve the confidentiality of the files of his clients and make sure that his personnel do the same during the managing or the destruction of the files.

Under section 606 par. 1 of the *Code of Civil Procedure*, 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. They may not be compelled to produce any documents prepared or obtained during the process, unless required by law to do so if a person's life, safety or personal integrity is at stake, or if 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 (sec. 420 and ff., *Code of Civil Procedure*).

To claim the privilege of non-compellability, the mediator must be certified by a body recognized by the Minister of Justice. In addition, the mediator must be subject to rules of professional conduct and be required to take out civil liability insurance or provide some other form of security.

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 the mediation record. The confidentiality of the mediation process prevails (sec. 607, *Code of Civil Procedure*).

The mediator must not use the obtained or revealed information from the mediation for personal gain or advantage, nor use it for publicity or promotional purposes or to improve his position. However it is permitted to promote mediation as a problem solving process.

Prior written authorization from the spouses/parents is required for any recordings electronically or by any other means of a mediation session or conversation with one or the other spouse/parent, as well as for the specific purpose it will be used. The sole purpose of any recording must be to facilitate the mediation process or for training or research purposes. However, in no case, may a copy be given to the spouse/parents. Any recording will have to be destroyed immediately after being listened to with the consent of both spouses/parents or, if no consent, once the mediation process is over at the prescribed delay by the professional order of the mediator for file conservation. Regarding recordings that could be used for training or research purposes, the spouses/parents will decide of their destruction date.

Information used for case discussion, research, education or supervision purposes must not allow for the identification of the spouse/parents and must only be supplied in accordance with the regulations of the Personal Information Protection Law in the public sector or the private sector, depending on the situation.

The supervising mediator is submitted to the same confidentiality rules as the acting mediator in the case.

### **b) Exceptions**

Despite his duty to preserve confidentiality the mediator shall reveal some information obtained during the mediation when the law expressly demands it (Youth Protection Law, Law concerning research into Death Causes and Circumstances) or when the information indicates a real or potential danger threatening human lives or their security (Quebec Charter of Human Rights and Freedoms), or to allow the mediator to be able to defend against a claim of professional misconduct (sec. 606 par.1, *Code of Civil Procedure*).

It is recommended to the mediator, if the situation calls for it, to seek advice from his professional order on any confidentiality issue.

Any revelation of information as described in the present section will in each case be limited to strict necessity according to the criteria of pertinence and legitimate interest.

## **SECTION 3 - RELATIONS BETWEEN SPOUSES/PARENTS**

### **3.1 Co-Mediation**

Remember that co-mediators must also abide individually to the present standards. The co-mediators must adequately inform the spouses/parents regarding the practice modalities of their co-mediation notably if they work exclusively in co-mediation. They must also inform the spouses/parents of the costs related to co-mediation or of the practical consequences on the subsidized government program. Any misunderstanding between co-mediators must be resolved in private and not in the presence of the spouses/parents while taking into account their overlying interests.

When more than one mediator participates in the mediation of a particular case, each of them must inform the others of the essential developments for the proper functioning of the case.

### **3.2 Sequential Mediation**

In some cases the mediator may realize, during the mediation, that the interests of the spouses/parents would be better served if some of the topics to be treated are submitted to a mediator from another professional order. The mediator then has the duty to refer the spouses/parents to take into account the limits observed.

### **3.3 Distance Mediation**

Mediation remains a worthwhile process even if, for example, the spouses/parents cannot be physically present one with the other during mediation sessions, given the great physical distance of their residences.

If required by the circumstances, the mediator may, with the parties' consent, use any appropriate, readily available technological means (sec. 617 par. 2, *Code of Civil Procedure*).

The principles presented in the present Guide are applicable to this type of mediation.

We also recommend consulting the COAMF Guide "*Médiation à distance - Le manuel de pratique de la médiation familiale à distance*," a useful reference tool.

### **3.4 Individual meetings and communications with any of the parties**

The mediator may communicate with each party separately, but in that case is required to inform the parties. No information relevant to the mediation process received from a party may be disclosed by the mediator, without that party's consent, to the other party (sec. 611, *Code of Civil Procedure*). When it is relevant to have an individual meeting between the mediator and one of the spouses/parents, these meetings cannot take place

without the consent of both of them, re the fact that there will be such meetings, re the objective, re the progress as well as the nature of the reports to be supplied to the other spouse/parent, as the case may be.

The same rules apply when the mediator deems it appropriate to meet the children or other members of the family (sec. 617, *Code of Civil Procedure*).

These meetings can take place at the initiative of one of the spouses/parents or at the initiative of the mediator.

In the situation where the mediator is authorized to reveal the content of the individual meetings, he must only reveal what he deems relevant to the continuation of the mediation process (sec. 614 and 618, *Code of Civil Procedure*).

### 3.5 Attorney of the Spouses/Parents

Under section 617, par. 1 of the *Code of Civil Procedure*, mediation sessions take place in the presence of both parties and a mediator or, if the parties so agree, two mediators. The sessions may also, if all agree, take place in the presence of a single party, in the presence of the child concerned or in the presence of other persons who are neither experts nor advisors, if their contribution may be helpful in resolving the dispute.

The parties may on their own initiative or at the suggestion of the mediator, suspend any session to seek advice from counsel or from any another person (sec. 618 and 610 al. 2, *Code of Civil Procedure*).

If the mediator considers that a proposed settlement agreement is likely to lead to a dispute in the future or cause prejudice to one of the parties or to the children, the mediator is required to invite the parties to remedy the situation and, if necessary, to seek advice from a third person. If convinced that the possibility of prejudice cannot be eliminated, the mediator may put an end to the mediation process (sec. 618, *Code of Civil Procedure*).

### 3.6 Implication of Third Parties In The File

The mediator must respect the complementary links between professionals in the mediation services, legal services, and the mental health and other social services. He cooperates with these professionals while respecting the rules of confidentiality as well as encouraging his clients to consult them if necessary.

## SECTION 4 - DUTIES OF THE MEDIATOR TOWARD THE MEDIATION PROCESS

### 4.1 General Dispositions

- 4.1.1 The mediator must place in plain sight the attestation of his professional license as a family mediator;
- 4.1.2 The mediator must respect the policies and the rules of mediation services from the Court or any other official authority who has referred him the spouses/parents for the purposes of mediation;
- 4.1.3 The mediator must know the applicable legislation, regulations and government policies. If the child's interests are at stake, the mediator is required to inform the parties that they must participate in an information session on parenting after a breakup and mediation, as provided in section 417 (sec. 417, *Code of Civil Procedure*);

### **Section 417 of the Code of Civil Procedure**

*Any case in which the interests of the parties and their children are at stake in connection with child custody, spousal or child support, the family patrimony, other patrimonial rights arising from the marriage or civil union or the partition of property between de facto spouses cannot proceed to trial unless the parties have jointly or separately participated in a parenting and mediation information session.*

*Persons who have filed with the court office a certificate attesting that they have already participated in such an information session in connection with a prior dispute or confirming that they have gone to a victim assistance organization recognized by the Minister of Justice for help as a victim of domestic violence are exempted from participating in such a session. In any such case, the court, in the children's interests, may nonetheless order participation in such an information session.*

#### 4.1.4 Regarding psycho-social aspects:

The mediator should especially be aware of the reality the spouses/parents are living due to the psychological shock caused by their separation and the transitions of their family. The needs and reactions of the spouses/parents as well as those of their children and their different development levels. The various custody styles in terms of their advantages and inconveniences. Furthermore, the mediator must understand the psychological challenges and communication difficulties that arise after a separation.

The mediator must take the appropriate steps to keep his knowledge current regarding the family mediation process and the applicable legislation.

Before accepting a mandate the mediator must take into account his limits as well as of the means at his disposition. In particular he must not undertake mediations for which he is not sufficiently competent, or does not have the proper tools, or is not part of a team in order to obtain the necessary assistance; failing this, the mediator must transfer the file to someone else.

### **DISPOSITIONS OF THE PROFESSIONAL CODE OF ETHICS**

Section 1 of the *Professional Code of Ethics For Guidance Counselors in Quebec*, R.S.Q. c. C-26, r. 68;

Section 29 of the *Code of Professional Conduct of Lawyers*, RSQ, chapter B-1, r1;

Section 3.01.01 of the *Professional Code of Ethics For Social Workers Order and Domestic and Family Therapists in Quebec*, R.S.Q., c. C-26, r. 286;

Section 8 of *Notary Law*, R.S.Q. c. N-3, r. 2;

Section 10 of the *Professional Code of Ethics For Psychologists*, R.S.Q., c. C-26, r. 212;

Sections 44 and 45 of the *Professional Code of Ethics For Psychoeducators in Quebec*, R.S.Q., c. C-26, r. 207.2.01.

## 4.2 Initial Meeting

The mediator must clearly explain the mediation process to the spouses/parents before any of them gets involved in such a process (sec. 609, *Code of Civil Procedure*). More precisely the mediator must before intervening:

1. inform the spouses/parties that they must participate in an information session on parenting after a breakup and mediation, if the child's interests are at stake (sec. 616, *Code of Civil Procedure*);
2. inform the spouses/parents of their role and responsibilities;
3. make sure that the spouses/parents agree to the rules governing the mediation process;
4. discuss the merits of the mediation in their particular case, the benefits, the limits and the associated risks, as well as other possible options;
5. explain that mediation is essentially based on good faith and on the establishment of a constructive communication;
6. define and explain in an objective manner the mediation process and the responsibilities of each participant, explain the differences that exist between mediation, reconciliation counseling, therapy, expert-advice, trials and arbitration;
7. inform the spouses/parents that mediation is a consensual, voluntary process and that the mediator or one of them can put an end to it at any time (sec. 614, *Code of Civil Procedure*);
8. inform the spouses/parents that it is possible that they can agree on all the topics treated or only on some of them during the mediation process;
9. inform the spouses/parents of the costs of family mediation services, of the number of sessions subsidized by the government to which they may be entitled and discuss with them about the payment of professional fees and costs, if necessary (*Regulation respective family mediation C-25.01, r. 0.7.*);
10. inform the spouses/parents of the role played by expert-advisers in financial, legal, psychological or other aspects; reach an agreement with them concerning the confidentiality and the payment of professional services, if necessary
11. notify the spouses/parents that the mediator cannot be compelled to disclose anything they hear or learn in the course of the mediation process regarding either of the spouses/parents in any dispute between them (sec. 606, *Code of Civil Procedure*);
12. notify the spouses/parents that a mediation contract will be completed and signed by them and the mediator;
13. advise the spouses/parents that the document given to them at the end of the mediation process, if applicable, constitutes a summary of their agreements reflecting their intent for legal consulting purposes only. That it is not to be signed by them nor is recommended that they do so;
14. inform the spouses/parents of subsequent steps, if needed. In order to do so the mediator must inform the spouses/parents of the difference between a summary of agreements reached in mediation and a signed agreement prepared by a jurist;
15. have the mediation contract signed by the spouses/parents and give a copy to each of them.

### 4.3 During Mediation

According to the rules of competences imposed by his Professional Code of Ethics and the present Standards of Practice Guide the mediator must help the spouses/parents to conclude an agreement on a free and voluntary basis, without influential abuse and in full knowledge of the facts.

The mediator must make sure that the objectives of the mediation are respected and that the spouses/parents have benefited from all necessary information on all the topics of their agreement.

The mediator must maintain balance and equality during the negotiations and must not tolerate any intimidation or manipulation from either of the spouses/parents during or between mediation sessions. If an imbalance, intimidation or manipulation persists, the mediator has the duty to end the mediation and to direct the spouses/parents to the appropriate resources (legal counsel, psychologists, etc.). The mediator may also put an end to the mediation process if, in the mediator's opinion, it is 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 (sec. 614 par.2, *Code of Civil Procedure*).

The mediator has the responsibility to consider the interests of the people affected by an actual or potential agreement and who are not present or represented in the mediation.

The mediator is required to see that the agreement is understood by the parties (sec. 613, par.2, *Code of Civil Procedure*). If the mediator considers that a proposed settlement agreement is likely to lead to a dispute in the future or cause prejudice to one of the parties or to the children, the mediator is required to invite the parties to remedy the situation

and, if necessary, to seek advice from a third person. If convinced that the possibility of prejudice cannot be eliminated, the mediator may also put an end to the mediation process (sec. 618, *Code of Civil Procedure*).

It is the duty of the mediator to make sure that the spouses/parents exchange all the relevant information and documents on all the subjects discussed during mediation (sec. 617, *Code of Civil Procedure*).

According to the subjects discussed during mediation, the mediator provides any relevant information prior to any decision making by the spouses/parents and must demand that the spouses/parents give him the following documents:

#### A) General Documentation

- Marriage or civil union certificate;
- Marriage, civil union or de facto spouse contract;
- Notarial deed or judicial declaration for non-subject spouses to family patrimony;
- Judgment of divorce or separation, or other judgment (for any mediation concerning a revision).

#### B) Parental Responsibilities

Identify the needs of the children, the needs of the spouses/parents and the different scenarios regarding the sharing of parental responsibilities.

#### C) Obligation of Support

- i) Documents related to the income of the spouses/parents and children:
  - Recent pay slips;
  - Tax returns and notice of assessment;
  - Financial statements;
  - Verification of employment benefits (for example: company car, etc.);
  - Verification of anticipated income for the next 12 months.

ii) Obligation of support between spouses/parents:

- Budgets, financial spread sheets, assets and liabilities of both spouses/parents;
- Simulations of fiscal impacts;
- Explorations related to :
  - > alimony assessment;
  - > renunciation of it;
  - > a global sum;
  - > a specific term, etc.

iii) Obligation of child support

- Child support determination form;
- Budget for the needs of the children, especially if 18 and over;
- List of special expenses and calculation of their net costs;
- Dental and medical plan (if appropriate);
- In case of shared custody, discuss the share of the costs covered by the basic parental contribution; (for example: winter clothes, boots, school supplies, etc.)
- Provide financial information on changes in child support and the financial aspects of daycare, post-secondary education, payment of child support, etc.

#### D) Family Patrimony

- Notarial document of non-applicability to family patrimony rules (if necessary);
- Information related to the partition date;
- List the assets and liabilities of the family patrimony, assessment of the market value of the items with documentary evidence;
- Assessment of the rights of spouses/parents in a private or public retirement plan during the marriage with documentation;
- Value of RRSPs with documentation;
- Simulation of the effects of sharing the registered earnings of the Quebec Pension Plan;

- Documents related to donations, succession, reinvestment, etc.;
- Verification of fiscal implications (for example : capital gains).

#### E) Marriage or Civil Union Contract

- Verification of the regime;
- Verification of donations

#### F) Matrimonial Regime/Partnership of Acquests

- Information relative to the partition date;
- List of the assets and liabilities of the spouses/parents related to the matrimonial regime of partnership of acquests, assessment of the market value of the items and the documentary evidence;
- Documents related to donations, succession, compensation, etc.;
- Verification of fiscal implications.

#### G) De facto spouse contract

- Verification of the modalities of the contract.

#### H) Miscellaneous

- Documents and information related to a compensatory allowance, an unjust enrichment, a de facto partnership, etc;
- Life insurance policies.

#### I) Other Documents

- Copy of the Summary of Agreements;
- Copy of the mediator's report;
- Notes re professional fees and contract regarding fees and/or billing form from the Ministry of Justice.

The mediator must give all the required information, but no opinion or advice, and this even in his professional area of expertise. During the mediation process, when deemed appropriate, the mediator must encourage the spouses/parents to obtain independent professional advice from legal, financial, or any other relevant professional experts.

During the mediation process, when necessary, the mediator must encourage and help the spouses/parents to assess the benefits, the limits, the risks and the cost of the mediation as well as other alternatives offered to them.

When it seems useful for the mediator to contact professional experts or any other third party having relevant information, the mediator must obtain written authorization to this effect and inquire about the confidentiality of such an undertaking with his clients.

#### 4.4 Interruption of the Process

The mediator may suspend the mediation process at any time, in the interests of the parties or one of the parties (sec. 610, par. 2, *Code of Civil Procedure*).

A party may withdraw from or put an end to the mediation process at any time at its own discretion and without being required to give reasons (sec. 614, *Code of Civil Procedure*).

The mediator may also put an end to the mediation process if, in the mediator's opinion, it is 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 spouses/parents or the children (sec. 614 and 618, *Code of Civil Procedure*).

This is the case when mediation is used, among other things, for the following purposes:

1. to use the children to increase or perpetuate the conflict between the spouses/parents;
2. to use the mediation process to exhaust the other spouse/parent;
3. to make or hold accountable, harass, scorn or harm the other spouse/parent;

4. To diminish or hide assets.

The mediator must also suspend or bring to an end the mediation if:

1. The mediator believes that one of the spouses/parents or both are not able to continue the mediation or do not desire to do so;
2. One or both the spouses/parents is not able to participate in a fair mediation process because of physical or psychological reasons. The mediator may then refer them to appropriate resources, if need be;
3. The mediator believes that reaching an equitable agreement is unlikely;
4. The mediator is convinced that the process is doomed to failure or is likely, if continued, to cause serious prejudice to one of the parties or the children (sec. 614 par. 2, *Code of Civil Procedure*).
5. After inviting the parties to remedy a situation that is likely to cause prejudice to one of the parties or the children and, if necessary, to seek advice from a third person, the mediator is convinced that the possibility of prejudice cannot be eliminated.

See Chapter 5 of this *Guide* for specific recommendations on situations that involve violence.

The mediator cannot bring the mediation to an end without a good reason. However the loss of trust from one spouse/parent or the other constitutes a good reason. If he envisions ending the mediation, he must within a reasonable delay notify his clients in order to avoid causing prejudice to the spouses/parents.



## 4.5 End of the Mediation

**Whether or not there is an agreement** between the spouses/parents, in accordance to section 617, al. 3 of the *Code of Civil Procedure*, the mediator must supply a report to the concerned authorities re the presence of the spouses/parents and mention the subjects on which there is an agreement without however revealing the content of the agreement and must also give a copy of it to the parties.

**When an agreement is reached**, the mediator must give to each of the spouse/parents a summary of the agreements in the shortest delay, which terminates his mandate and constitutes the end of the family mediation mandate thereby avoiding any confusion with another role the mediator might have in a subsequent mandate. It is recommended that the Summary of Mediated Agreements be read and given in its final version in person to the spouses/parents in order to verify with them that it faithfully reproduces their agreements. This summary must include a recommendation to the spouses/parents to consult in order to obtain independent legal or other advice, as well as information on the procedures to undertake to have their agreements confirmed by the Court. In particular, in the eventuality that the Summary of Mediated Agreements includes an intention to not claim some rights; for example an alimentary pension, a part of the family patrimony, etc., the mediator must then inform the spouses/parents that it is recommended that they seek legal advice on the aforementioned intentions.

For these reasons, the Summary of Mediated Agreements must include the warning that can be found in Addendum II of the present Guide.

## 4.6 After the Mediation

Any mediator to whom one spouse/parent or the other including a third party wishes to give a subsequent mandate, related or not to the mediation must first assess the situation.

Each case is unique and comprises particular risks and consequences and can also be the object of professional ethics considerations that may vary depending on the certifying organizations.

The mediator possess confidential information on one spouse/parent or the other, on third implicated parties and on the situation that prevails between them; he must not place himself in a situation where he could use that information in any way in the interest of one of the parties at the expense of the other or to his personal advantage.

In this context:

**4.6.1. When there is a dispute between the spouses/parents (including the children)** the professional who acted as a mediator cannot represent one of the spouses/parents, nor can he act as an expert in court, or in a dispute involving the parties (including the children), no matter the circumstances.

**4.6.2. When a mediation did not lead to agreements on one of the subjects discussed during mediation**, the professional who acted as a mediator must before accepting any subsequent mandate related to any of the subjects treated during mediation assess the feasibility of his intervention in light of the following principles:

When the mediation did not lead to an agreement the professional who acted as a mediator must refrain from offering

subsequent services related to any of the subjects treated during mediation if such services are susceptible to cause a prejudice to either of the spouses/parents especially because of the information obtained during mediation relative to either spouse/parent .

More specifically, the mediator must take into consideration the interest of all parties including the children by assessing in particular if his interventions or their results could eventually be harmful to one of the parties.

Furthermore, the mediator must assess if the new situation is susceptible to place him in a situation of a conflict of interests or to have the appearance of a conflict of interests.

#### **4.6.3. When the mediation led to agreements on each of the subjects discussed during mediation;**

- a) The professional who acted as a mediator can supply **professional services to the spouses/parents jointly** including a third party on the condition:
1. To inform in an objective manner the limits of his intervention and to have them acknowledge it in writing;
  2. To clarify his new professional role in order to make the distinction from his role as a mediator;
  3. To make sure that his Professional Code of Ethics does not anticipate an interdiction to this effect.

Concerning a mediator who is an attorney, he can represent the spouses/parents in the framework of a joint procedure in order to ratify their agreement, after recommending they obtain independent legal advice.

Concerning a mediator who is a notary, he can accept a mandate related to one of the subjects discussed during mediation, after recommending to the spouses/parents to first obtain independent legal advice.

- b) The professional who acted as a mediator can supply professional services to one party or the other including a third party on the condition:
1. To inform the party in an objective manner of the consequences of his intervention, specifically that the mediator or any other person within his milieu may not be able to consequently accept another mediation with them and that both agree to this in writing;
  2. To clarify the new professional role in order to make the distinction from his role as a mediator ;
  3. To make sure that his Professional Code of Ethics does not anticipate an interdiction to this effect.

These same principles apply to any person practicing mediation while taking into account the type of relationship; professional, personal or business, between all of them.

## 4.7 Remuneration of the Mediator

The mediator will not accept nor give a commission, rebate or any other form of remuneration for the clients he refers, whether it be for mediation services or any other professional services related to mediation.

The mediator cannot demand to be paid in advance for his professional services. He cannot demand that the spouses/parents make the commitment to use his services for a determined number of sessions or services. The mediator cannot offer a package deal which includes legal proceedings.

The mediator must not base his professional fees on the results obtained by the mediation.

In the cases of co-mediation, the mediators must establish in advance, with the spouses/parents, the professional fees of each of the mediators.

## 4.8 Disclosing the Mediation Fees

Within the framework of a mediation subject to the government program:

- a) The mediator must inform the spouses/parents of the time being recorded in their file;
- b) If the mediator intends to directly bill the spouses/parents certain fees (for example, file opening, photocopies, etc.) he must specify these costs ;
- c) The mediator has the spouses/parents sign the government billing form at the end of each session.

Mediator's fees that are not covered by the Family Mediation Service are apportioned between the parties based on their respective incomes or according to their agreement, unless the court orders a different apportionment. (sec. 424, *Code of Civil Procedure*).

## SECTION 5 - DOMESTIC VIOLENCE

### 5.1 Guiding principles

- 5.1.1 The definition of domestic violence is the one retained in Intervention Policy in Matters of Domestic Violence, to prevent, detect, and fight against Domestic Violence (Quebec Government, 1995).

*“The domestic violence is characterized by a series of repetitive actions that generally occur according to an ascending curve. The specialists call this progression “escalation of the violence” (...) All these phases are not always present and do not necessarily occur in that order. It proceeds, via the aggressor, according to a cycle defined by successive phases coupled by a rise of tension, aggression, disempowerment, then abatement and reconciliation. Correspondingly in the victim these phases are fear, anger, the feeling that he/she is responsible for the violence and, finally, the hope that the situation will get better (...)”*

- 5.1.2 The **four criteria**<sup>1</sup> are indicators recognized to allow the differentiation between domestic violence (domestic domination) from a conflicting dynamic in the couple:

- intent (to control);
- instrumental aggressions (physical, psychological, verbal, sexual or economic);
- repetition (cycle of violence aggravation, justifications);
- impact (fear, powerlessness).

<sup>1</sup> Criteria developed by the Regroupement des maisons pour femmes victimes de violence conjugale and then integrated to the content of violence detection training, jointly developed by the partner organizations with the COAMF.

5.1.3 Each situation of domestic violence is a unique situation where the victim tries to protect himself and to re-establish an equilibrium in the couple by developing protective strategies to face the domination strategies of the person exhibiting violent behaviors.

5.1.4 Domestic violence is a difficult and complex reality to detect or to help the couple deal with in a future intervention. Domestic violence does not end with the couples separation.

5.1.5 It is accepted that family mediation may not be appropriate in a domestic violence context.

## 5.2 Duties and Obligations

5.2.1 To insure the psychological and physical wellbeing of the clients represents the guiding principle of the family mediator's approach in a domestic violence context.

5.2.2 It is the duty of all mediators to act competently while taking into account the particular issues within a domestic violence context.

In the context of domestic violence, the mediator's competency includes the ability to identify the problem and the appropriate intervention. The mediator may also suspend or terminate the mediation process if there is persistent domestic violence and the abuser or the abused person is unable to negotiate respectfully face to face.

5.2.3 This whole section reminds the mediator of his obligations to make sure at all times during the family mediation process of the ability to negotiate on an equal basis and of a free and enlightened consent of each of the spouses/parents.

## 5.3 Detection

5.3.1 The family mediator needs to understand two appropriate tools/ techniques for recognizing domestic violence and distinguishing it from strategies couples use in fighting.

5.3.2 In each new family mediation the family mediator must use the means that he deems pertinent to differentiate the type of dynamic to which he is confronted. That is; circumstantial conflict, the dynamics of high level conflict and finally domestic violence.

5.3.3 This evaluation is made continuously throughout the family mediation process.

## 5.4 Intervention

5.4.1 Any intervention in a context of domestic violence, to refer either to another professional or other resource for help must take into account all of the previous warnings and brings to an end the mediation process or its continuation in an adapted fashion.

5.4.2 In the case of an adapted intervention in a domestic violence context, an addendum to the mediation contract must be completed and signed by each of the spouses/parents (see model at the end of the present Guide).

## 5.5 Referrals

5.5.1 The knowledge of the local network of specialized resources in domestic violence (for the victims and for the those displaying violent behaviors) is essential in order to safely make referrals. A directory of these resources appears on the COAMF website.

5.5.2. The referral to resources specializing in domestic violence can allow the victims to obtain support in developing security scenarios for themselves and their children and for the persons displaying violent behavior to take responsibility for their behavior.

## SECTION 6 - MEDIATION CONTRACT

### 6.1 Content of the Mediation Contract

The mediation contract must be in writing, signed by the spouses/parents and by the mediator as soon as the decision to proceed with mediation is taken (see model in Addendum I). It must at least contain the following items:

1. The identification of the spouses/parents and the mediator;
2. The scope of the mediation mandate;
3. The subjects to be discussed;
4. A commitment from the spouses/parents not to start legal procedures or if necessary to suspend them, during the mediation process, unless there is consent or in an emergency situation;
5. A commitment from the spouses/parents to completely disclose all relevant information including financial aspects;

the spouses/parents are to be advised on the consequences of not disclosing all the financial information;

6. A commitment from the spouses/parents to authorize the mediator to obtain all necessary information, where required;
7. A renunciation from the spouses/parents to subpoena the mediator in legal procedures;
8. The nature of the documents that may be produced by the mediator and their use, if any;
9. The statutory regulations of the subsidized program related to family mediation;
10. The cost of mediation services, the division of the costs and the method of payment as well as specifying the payment of external expertise, as the case may be;
11. The modalities of co-mediation or sequential mediation, if the situation should arise.

## SECTION 7 - SUMMARY OF MEDIATED AGREEMENTS

### 7.1 The Nature and Objective of the Summary of Mediated Agreements

The Summary of Mediated Agreements constitutes the final document of the mediation process by indicating consensus of the spouses/parents on the subjects discussed during mediation.

The summary may then state that an agreement has occurred on each of the subjects submitted to the mediation or only on some of them. In the case of a partial agreement the summary of the agreements must indicate the subjects on which there is a disagreement between the spouses/parents.

The summary is distinct from the signed agreement by both spouses/parents to be approved by the Court.

**This summary constitutes a:**

- a) reference tool for a reflection by the parties and the motives that were at the origin of the agreements;
- b) consultation tool to obtain legal or other advice ;
- c) reference tool for the writing of a draft prepared by a legal consultant to be deposited in court or later for settlement purposes between the spouses/parents.

After mediation the Summary of Mediated Agreements is read and given to each of the spouses/parents. It might become a working tool to generate other options following a legal consultation or to facilitate the revision if changes occur in the life of either spouse/parent or the children.

**7.2 Form and Content of the Summary of Mediated Agreements**

The document must be dated and identified with the name of the mediator who wrote the summary. It is important to present it to the spouses/parents to have the content approved and to insure that the final version of the Summary of Mediated agreements is in compliance with the decisions taken during mediation.

The Summary of Mediated Agreements is only signed by the mediator.

The mediator must not have the spouses/parents sign the summary nor leave any space on the summary where they could affix their signature. The mediator must include a warning (see model in Addendum II) stipulating the nature and impact of the document, as well as the risks that signing it or its implementation would cause to the spouses/parents.

It is recommended that the paper on which is printed the summary has the mention « *Confidential for purposes of mediation only* » as a watermark on each of the pages.

**The mediator must write in clear and precise terms in the summary:**

- 1. name of the spouses/parents;
- 2. matrimonial status, the date of the beginning of cohabitation and the date of marriage if appropriate;
- 3. matrimonial regime/marriage contract;
- 4. date they ceased living together;
- 5. Topics submitted to mediation;
- 6. discussions and considerations, namely the appreciation of the situation as well as the needs of the children and of the spouses/parents;
- 7. reflect the intentions of the spouses/parents regarding the topics submitted to mediation;
- 8. a report of the mediation agreements as well as the information and elements on which they were based (spouses/parents income, value of assets, actuarial value of pension plans, etc.);
- 9. the report will comprise, among others if applicable, the following sections:
  - a) parental responsibilities:
    - parental authority;
    - time the children will spend with each parent;
    - child support from the spouses/parents and sharing of the expenses.
  - b) Obligation of spousal support;

- c) Division of financial assets:
  - family patrimony;
  - matrimonial regime;
  - marriage contract;
  - compensatory allowance, de facto partnership, etc.;
  - co-proprietorship/common debts.

10. When the Summary of Mediated Agreements contains a clause that is likely to affect the rights of the spouses/parents as foreseen by the law, one must identify the impacts and state the motives;
11. The warning (Addendum II).

## SECTION 8 - FILE MAINTENANCE

### 8.1 Premise

In order to meet the more and more complex requirements of the professional practice of family mediation the present section aims to be a reference tool with guidelines to standardize file maintenance in the specific framework of family mediation.

### 8.2 Primacy of Regulations on File Maintenance

The regulations related to file maintenance and the Professional Code of Ethics of each certifying organization have precedence over the Standards of Practice in Family Mediation.

When professional regulations or internal rules of an establishment do not anticipate rules concerning file maintenance, the following regulations apply:

- to consult or obtain copies of a mediation file the written consent of the spouses/parents (including children who are 14 years old or older, where they have been personally involved) is required; the mediator may give to either spouse/parent those documents belonging to him personally on a simple request.

### 8.3 Rules Relative to the Maintenance of Mediation Files

The mediator keeps the following information in each file:

- opening date;
- file referral source, if appropriate;
- personal information of the clients;
- dates and duration of the interviews and phone conversations mentioning the people involved as well as the themes discussed;
- dates and duration of the work done by the mediator outside the presence of the clients and its nature;
- correspondence/emails;
- documents consulted during the mediation process;
- references to external consultants or resources;
- completed documents for the purpose of the mediation (for example: earnings and expenditure statements, tax simulations, child support determination forms, etc.);
- any draft of working documents given to the clients with the date it was drafted, handed-over or sent;
- final Summary of Mediated Agreements including the warning with the date it was drafted, handed-over or sent;
- detailed motives for any suspension of the mediation;
- motives for closing the file: agreement, absence of collaboration of one spouse/parent, instance(s) of violence, negotiation refusal, referral to another resource, etc.;
- report of the mediator;
- Ministry of Justice billing form;
- professional fees invoice and costs, if appropriate

## 8.4 Conservation/Destruction

The rules related to the conservation or destruction of the files will be those of each certifying organization. In the absence of specific rules, the conservation period will be a minimum of five years.

## SECTION 9 - SUPERVISION IN MEDIATION

### 9.1 Nature of Supervision in Family Mediation

#### a) Definition of Supervision

Supervision is defined as the theoretical and practical support to a conditionally accredited mediator with the objective of insuring the quality of practice.

Its objective is to sensitize the mediator to the practices in mediation, the required knowledge and his capacity as a mediator to guide the spouses/parents toward an equitable agreement. An other aim is the development and refinement of the abilities and intervention strategies of the candidate as regards the content and the process, while taking into account that the mediation mandate may be either global or partial.

The supervision of a mediation mandate may be considered part of a “tutorship” for the first family mediation files in this field of multi-disciplinary practice in compliance to the *Regulation concerning Family Mediation*.

#### b) Objectives of Supervision

Supervision is an essential step toward the definitive certification of the mediator. Its aim is to favor the integration of the mediator to commit to the principles and tools related to mediation. Consequently, the supervision consists of:

1. Verifying and consolidating the knowledge, of the mediator with engagements, of the basic rules applicable to mediation and this before his first mediation mandate;

2. Developing and refining the abilities of the mediator as well as his intervention strategies;
3. Improving the quality of the interventions of the mediator under supervision in his files whether global or partial ;
4. Guiding and supervising the analysis of the content of the interview made by the mediator;
5. Helping the mediator to integrate the family mediation process;
6. Providing the mediator with feedback on his understanding of the challenges of a mediation mandate;
7. Providing where necessary’ recommendations to the mediator on his professional practice as a mediator;

It is recommended to encourage the mediator to continue to benefit from supervision, if the supervisor finds that there are some important gaps, even if his obligations as per the regulations are completed.

#### 9.2 Acknowledgement of Mediation Supervisors

The mediator must make sure to call upon a supervisor who has completed 40 mediation mandates according to the Family Mediation Regulation. To do so, the mediator may consult any certifying organization to obtain a list of supervisors recognized by these organizations. The full list is also available on the COAMF website.

#### 9.3 Supervision Session

##### a) Content and Duration

A supervision session must be 30 minutes minimum duration for the mediator to obtain his credits; except for the one before the first mediation by the mediator which must be an hour or more. Supervision sessions take place between and after the mediations of the mediator with engagements.



## b) Modalities of Supervision

The supervisor must make sure that the supervised mediator takes part in detailed discussions of his mediations. If a mandate allows it, one of the supervised sessions may be an interview realized in the presence of a supervisor or the analysis of a video or audio recorded mediation.

The supervisor will indicate in his file the supervision modalities that were used.

Supervision in family mediation can be offered according to two modalities:

### 1. In person meeting

Meeting between a supervisor and a mediator or a group of mediators. It is strongly recommended that the first supervision takes place in person.

### 2. Remote supervision

When distance justifies it, while respecting the objectives of supervision, telecommunication use (phone, fax machine, email, video-conference) may represent a valid alternative to an in-person meeting. However, a minimum of 5 hours of in-person supervision is recommended to satisfy the objectives of professional training.

## c) Types of Supervision

### 1. Individual Supervision

Meetings and contacts between a supervisor and a mediator.

### 2. Group Supervision

Meetings between a supervisor and a group of mediators. It is to be noted that only the mediator who presents a case receives the credit of a

supervision session.

## d) Supervision File

The supervisor must maintain a supervision file. The maintenance of this file must take into account the following:

- a) The supervisor must respect the established standards by his professional order on the maintenance of the files;
- b) The supervisor must open a new file for each of the mediators with engagements that he supervises;
- c) The supervisor must indicate in the file of each mediator he supervises the dates and duration of each of his supervisions as well as the items discussed in supervision and the recommendations suggested;
- d) The supervisor must indicate in the file the deficiencies to be corrected by the mediator with engagements, if necessary, and note the follow-up on them;
- e) The file must contain a copy of the supervision contract.

## 9.4 Supervision Contract

### a) Choice of Supervisors

The mediator can choose one or more supervisors according to his specific training needs, the difficulties peculiar to a file or according to various affinities while respecting the principles of impartiality established within the present *Guide*.

It is recommended that the mediator with engagements be supervised in part or in whole for some mediations by a supervisor working in another professional field than his own (jurist/non-jurist, non-jurist/jurist).

### **b) Content of the Supervision Contract**

A supervision contract should be signed by both parties. This contract should contain at least the following items:

1. The objectives of supervision and the functions of the supervisor;
2. The responsibilities of the mediator (namely his active participation and his implication in the supervision sessions as well as a commitment to reveal all relevant information necessary for supervision);
3. The commitment of the mediator to tell his clients that their file will be supervised;
4. A reminder of the applicable rules of mediation, namely the obligation to confidentiality and impartiality as stipulated in the present *Guide*;
5. The professional fees and indirect costs of supervision if any;
6. A commitment by the supervisor to produce in the shortest delay, upon request of the supervisee an affidavit pertaining to the supervision sessions(s) that was (were) done, of the modalities of the supervision and supplying all the information required to show that the regulations regarding supervision were respected.

### **c) Confidentiality of the Supervision Files**

The supervisor must maintain a file on the supervision sessions for the preparation of a supervision report required to finalize the accreditation while respecting the confidentiality regulation presented in this *Guide*.

## **SECTION 10 - PUBLIC DECLARATIONS AND PUBLICITY**

### **10.1 Public Declarations**

Any public declaration made by a mediator about family mediation must have for its objective:

1. To inform about the mediation process;
2. To objectively present mediation as one mode of prevention and dispute resolution which allows for sensible and enlighten choices.

Any public declaration must not mislead, misrepresent facts nor contain:

1. false, fraudulent, erroneous or unfair information;
2. information susceptible to create false hope regarding the expected results.

### **10.2 Publicity**

The mediator must make his publicity comply with the current professional laws and his professional orders regulations. Furthermore, the mediator must not use information disclosed or obtained during a mediation for publicity purposes.

In any publicity the mediator will have to indicate his basic professional title (in accordance to his professional order) accompanied with the title of *accredited family mediator or médiateur familial accrédité*.

When announcing his services the mediator must limit himself to informing the public about his services, without presuming the results of the mediation.

## **SECTION 11 - DEVELOPMENT OF FAMILY MEDIATION**

The mediator is invited to contribute to the advancement of mediation by encouraging education, research, publications and information, by bringing his personal contribution.

## MEDIATION CONTRACT MODEL

BETWEEN

AND

1. We the undersigned understand that the objective of mediation is to allow spouses/parents who have separated, divorced or have made the decision not to live together anymore, to come to an agreement regarding the exercise of parental authority, the access and the residence of the children, the financial responsibilities, the division of the family assets and the settlement of the matrimonial regime, If any.

2. We consent to submit to the mediation the following questions:

3. We acknowledge that the mediator is an impartial, neutral person who does not represent either one of us, but whose role is to help us arrive at a mutually satisfactory agreement based on the questions listed above.<sup>2</sup>

4. We agree to behave with transparency toward each other, and that the discussion take place in an atmosphere of cooperation where each of us will respect the other and work towards finding solutions.<sup>3</sup>

5. We commit ourselves to not starting civil legal procedures by either one of us or to suspend them, if started, during the mediation process except in a matter of emergency or of mutual consent.<sup>4</sup>

6. We commit ourselves to disclosing all the information regarding the children during our negotiations on the exercising of parental authority, the residence of the children, access to the children and the financial responsibilities toward them.

<sup>2</sup> Sec. 3, 605 and 610, *Code of Civil Procedure*.

<sup>3</sup> Sec. 2 and 610, *Code of Civil Procedure*.

<sup>4</sup> Sec. 612, *Code of Civil Procedure*.

7. We commit ourselves to disclosing all financial information regarding our income and our assets during the negotiations concerning financial support, the division of assets and the settlement of the matrimonial regime, as the case may be. We authorize the mediator to obtain relevant information from third parties where it is necessary.
8. It is understood that either one of us, as well as the mediator, are able to put an end to the mediation at any time<sup>5</sup>.
9. We acknowledge that the content of our meetings, of the interviews and of our file is confidential. We commit ourselves to not use as a proof in front of a court any document contained in the file including the Summary of Mediated Agreements without the consent of both parties. The mediator cannot communicate this information to anyone except for the purpose of research, under the condition that anonymity is respected, or when a court expressly orders it<sup>6</sup>.
10. (If applicable) We acknowledge having been informed that our mediation file will be discussed in the framework of a mediator with engagements under supervision, in accordance with the Regulation respecting family mediation.
11. We both understand that we will not be able to summon the mediator or his supervisor to act as a witness in the eventuality of a litigation between us.
12. We are informed that the Summary of Mediated Agreements prepared at the end of the mediation process, does not constitute a legal document, nor an enforceable agreement. It will only serve to help the legal advisors who will be retained to prepare the appropriate legal documents. We are also informed that the signature of the Summary of Mediated Agreements can produce legal effects which may be enforceable and that it is ill advised to sign, before obtaining independent legal advice.
13. We are informed that in the eventuality where one of us wishes to renounce to a right anticipated in law the mediator will strongly recommend us to obtain independent legal advice as to the appropriateness of such a decision.
14. We acknowledge that even if the mediator has legal training or is informed of applicable rights in family matters the latter will not give legal advice or opinions toward our respective obligations and rights.
15. The mediator declares to report the following relation to both parties:

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and to have discussed with us this situation, and we accept knowing all the facts to confirm the mandate hereby given to this mediator.

<sup>5</sup> Sec. 608, 610, 614 and 618, *Code of Civil Procedure*.

<sup>6</sup> Sec. 4, 5 and 606, *Code of Civil Procedure*.

16. (If applicable) We acknowledge having been notified of the existence of a subsidized government program in mediation and of its application to our actual situation, but we consent to pay the professional fees of the mediator who does not work at the anticipated government rate and in this case the professional fees of the mediator are:

\_\_\_\_\_

17. In our current situation, we declare that we have benefited from:

a) attending the information session on parenting after a breakup and mediation<sup>7</sup>. YES

NO

b) From (indicate the exact length of time) of mediation<sup>8</sup> YES

NO

Duration: \_\_\_\_\_

18. In our actual situation, we will benefit from a government program:

a) From group or couple information session YES

NO

b) From (indicate the exact length of time) mediation sessions<sup>9</sup> YES

NO

Duration: \_\_\_\_\_

19. In our actual situation, we will assume the following professional fees:

a) After five (5) hours or two (2) hours and thirty (30) minutes, as foreseen in Regulation respecting family mediation (sec. 10.1);

b) The rate of the mediator will be:

The one prescribed by the Regulation respecting family mediation, which is \$110.00 an hour

or

of \_\_\_\_\_ \$ an hour in the case where the mediation is not covered by the Regulation respecting family mediation

A co-mediator will take part in the mediation sessions YES  NO

<sup>7</sup> Sec. 417, Code of Civil Procedure.

<sup>8</sup> Sec. 10 and 10.1, Regulation respecting family mediation

<sup>9</sup> Sec. 10 and 10.1, Regulation respecting family mediation

The hourly rate of the co-mediator will be prescribed by the Regulation respecting family mediation

or

of \_\_\_\_\_ \$ an hour in the case where the mediation is not covered by the Regulation respecting family mediation

20. We accept to settle the following fees:

(Define the fees and the cost related to them)

21. We accept to pay the mediation costs as defined in the present contract according to the following modalities:

a) In proportion of:

\_\_\_\_\_ % for \_\_\_\_\_ and \_\_\_\_\_ % for \_\_\_\_\_ ;

b) At the end of each mediation session YES  NO

According to another modality YES  NO

Such as: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We accept the terms contained in this document,

**IN WITNESS WHEREOF, we have signed**

in (city) \_\_\_\_\_ on (date) \_\_\_\_\_

\_\_\_\_\_  
**Spouse/parent** **Spouse/parent**

\_\_\_\_\_  
**Mediator**

## ADDENDUM TO THE MEDIATION CONTRACT

With the intent that the mediation develops in the most harmonious and efficient way possible, we commit ourselves to respect the following conditions and rules:

### Behavior during egalitarian negotiations:

- Each having consented to proceed face to face in a respectful manner; agree that no pressure, threat or intimidation will be used by either one of them during mediation;
- Any attempt to negotiate outside the mediation sessions or any pressure to impose an agreement, threat or intimidation will be reported to the mediator;
- Any breach or non-respect to any of these commitments by either spouse/parent may lead to the ending of mediation; it is understood that either one of us as well as the mediator may bring the mediation to an end at any time.
- If the mediator deems appropriate:

### Individual caucuses:

- The mediator will be able to resort to individual discussions and phone conversations during the mediation process; depending on the circumstances the mediator will be able to go back and forth between the spouses/parents to facilitate the mediation development and the expression of the desires and needs of each.

### External help

- Each of us will make use of help or therapy through a support organization during the mediation process;
- Each of us will consult with a legal advisor during the mediation process.

### Communication :

- No direct communication between us during the mediation.

**Contacts outside sessions:** the contacts outside sessions are regulated as follows:

- No face-to-face contact;
- No visits to the dwelling of the other spouse/parent;
- No visits to the work place of the other spouse/parent;
- No phone contacts, emails, text messages or any other communications through another means of communication;
- No resorting to children as messengers;
- By emails containing solely information regarding the children with a carbon copy to the mediator;
- Other: .....





## WARNING MODEL

You are informed that the present Summary of Mediated Agreements purpose is to be a reference tool to encourage reflection and to orient future legal actions.

You have been informed that the present document constitutes a summary of agreements reflecting your consensus and that the mediator has specified that it is by no means a document to be signed by you, neither that it was recommended to you to do so.

You are informed that the present Summary of Mediated Agreements does not constitute a contract, a judgment, or an agreement on accessory measures to be deposited at court.

NOTE: If you should sign this Summary of Mediated Agreements than this document becomes a contract which is binding for you both even though it is not executable in the same fashion as a judgment. Therefore, it is not advisable to sign this document before having independent legal advice.

You are informed that in the eventuality where the Summary of Mediated Agreements contains an intent to renounce rights that are prescribed by law, a legal consultation is recommended and you have been duly informed of this by the mediator.

You are informed that the implementation of all or part of the Summary of Mediated Agreements may also produce legal effects in the sense that it could constitute a legal acknowledgement of the agreement.

You are informed, of the obligation to prepare or to have all required documents prepared for you and then confirmed by the court, as quickly as possible in order to make the clauses of your Summary of mediated Agreements executable. Before starting this undertaking an independent legal consultation is recommended.

You are informed that in the situation where you are united by marriage you have to obtain a divorce or a separation judgment; If in a civil union, you must obtain a common declaration or a judgment of dissolution to execute the division of the family patrimony such as: division of the funds, earnings registered in the Quebec Pension Plan, etc.

When you signed the contract for mediation you both undertook not to use the information gained during mediation as proof before the courts; including this Summary of Mediated Agreements unless both parties agreed.

You are informed that if information pertinent to certain of the above clauses has not been fully disclosed than the acceptance of those clauses may be put into question.

Standards of practice in family mediation  
*Code of civil procedure ( chapter C-25.01)*

PRINCIPLES OF PROCEDURE APPLICABLE TO PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES		
Sec. 1	<p>To prevent a potential dispute or resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process.</p> <p>The main private dispute prevention and resolution processes are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them. The parties may also resort to any other process that suits them and that they consider appropriate, whether or not it borrows from negotiation, mediation or arbitration.</p> <p>Parties must consider private prevention and resolution processes before referring their dispute to the courts.</p>	<p>p. 1 p. 4</p>
Sec. 2	<p>To prevent a potential dispute or resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process.</p> <p>The main private dispute prevention and resolution processes are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them. The parties may also resort to any other process that suits them and that they consider appropriate, whether or not it borrows from negotiation, mediation or arbitration.</p> <p>Parties must consider private prevention and resolution processes before referring their dispute to the courts.</p>	<p>p. 1 p. 4 p. 29</p>
Sec. 3	<p>The third person called upon by the parties to assist them in the process they have opted for or to decide their dispute must be chosen by them jointly.</p> <p>The third person must be capable of acting impartially and diligently and in accordance with the requirements of good faith. If acting on a volunteer basis or for a disinterested motive, the third person incurs no liability other than that incurred through an intentional or gross fault.</p>	<p>p. 1 p. 4 p. 29</p>
Sec. 4	<p>Parties who opt for a private dispute prevention and resolution process and the third person assisting them undertake to preserve the confidentiality of anything said, written or done during the process, subject to any agreement between them on the matter or to any special provisions of the law.</p>	<p>p. 1 p. 4 p. 30</p>

Sec. 5	The third person called upon to assist the parties may provide information for research, teaching or statistical purposes or in connection with a general evaluation of the dispute prevention and resolution process or its results without it being a breach of the person's duty of confidentiality, provided no personal information is revealed.	p. 1 p. 4 p. 30
Sec. 6	Parties who agree to resort to a private dispute prevention and resolution process, together with the third person involved in the process, if any, determine the procedure applicable to the process they have selected. If the parties have opted for mediation or arbitration or a similar process and the procedure they have determined must be supplemented, the rules of Book VII apply.	p. 1 p. 4
Sec. 7	Participation in a private dispute prevention and resolution process other than arbitration does not entail a waiver of the right to act before the courts. However, the parties may undertake not to exercise that right in connection with the dispute in the course of the process, unless it proves necessary for the preservation of their rights.  They may also agree to waive prescription already acquired and the benefit of time elapsed for prescription purposes or agree, in a signed document, to suspend prescription for the duration of the process. Prescription cannot, however, be suspended for more than six months.	p. 1 p. 4
<b>PARENTING AND MEDIATION INFORMATION SESSION</b>		
Sec. 417	Any case in which the interests of the parties and their children are at stake in connection with child custody, spousal or child support, the family patrimony, other patrimonial rights arising from the marriage or civil union or the partition of property between de facto spouses cannot proceed to trial unless the parties have jointly or separately participated in a parenting and mediation information session.  Persons who have filed with the court office a certificate attesting that they have already participated in such an information session in connection with a prior dispute or confirming that they have gone to a victim assistance organization recognized by the Minister of Justice for help as a victim of domestic violence are exempted from participating in such a session. In any such case, the court, in the children's interests, may nonetheless order participation in such an information session.	p. 2 p. 4 p. 5 p. 13 p. 31
Sec. 418	The information session deals with parenting issues, such as the effects of conflict on the children, and with the parental responsibilities of parties, and explains the nature and purpose of mediation, the process involved and how the mediator is chosen.	p. 4

Sec. 419	<p>The information session is conducted in a group setting; it is given by two mediators certified in accordance with the regulations under article 619, only one of whom must be a lawyer or a notary. The session may be held using any appropriate technological means available.</p> <p>If the parties wish to attend separate sessions, their wish must be respected.</p> <p>After the session, a participation certificate is issued by the Family Mediation Service.</p>	p. 4
<b>MEDIATION</b>		
Sec. 420	<p>The court may, at any time, stay the proceeding or adjourn the trial to enable the parties to enter into or continue mediation with a certified mediator of their choice, or to ask the Family Mediation Service to work with the parties.</p> <p>Before making such a decision, the court considers such factors as whether the parties have already met with a certified mediator, whether there is an equal balance of power between the parties, whether there have been incidents of family or spousal violence and whether mediation is in the interests of the parties and their children.</p> <p>Mediation is governed by the general principles set out in this Code and conducted in keeping with the process provided for in this Code.</p>	p. 4 p. 11
Sec. 421	<p>The court may stay the proceeding or adjourn the trial for not more than three months. On or before the expiry of that time, if mediation has not begun or if it has been ended, the proceeding is continued unless the court extends the stay or adjournment, with the parties' consent, for the time it specifies.</p> <p>The judge who stays the proceeding or adjourns the trial remains seized of the matter, unless the chief justice decides otherwise.</p>	p. 4 p. 11
Sec. 422	<p>When intervening at the court's request, the Family Mediation Service designates a mediator and sets the date of the first meeting, which must be held within 20 days after the decision. A mediator chosen by the parties is required to begin the mediation within the same time.</p>	p. 4 p. 11
Sec. 423	<p>If the parties do not enter into mediation within the allotted time or if they put an end to mediation before the dispute is resolved, the mediator files a report to that effect with the court office. The mediator also sends the report to the Family Mediation Service, to each of the parties and, if represented, to their lawyers.</p> <p>The court clerk records the report filing date in the court register, then informs the judge seized of the matter and delivers the case record to the latter so that a trial date can be set. The stay or adjournment ends on the recording of that date in the court register.</p>	p. 4 p. 11

Sec. 424	Any part of the mediator’s fee that is not borne by the Family Mediation Service is apportioned between the parties based on their respective income or according to their agreement, unless the court orders a different apportionment.	p. 4 p. 11 p. 21
<b>JUDGMENT</b>		
Sec. 454	The court seized of an application for the homologation of an agreement or a draft agreement between the parties may amend the agreement or draft agreement on the basis of the interests of the children or one of the spouses. The court may also postpone its decision until the parties have amended the agreement or draft agreement, or deny homologation, in which case the proceeding continues.	p. 4 p. 9
<b>ROLES AND DUTIES OF PARTIES AND MEDIATOR</b>		
Sec. 605	<p>A mediator is chosen, directly or through a third person, by mutual agreement of the parties.</p> <p>The 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 parties may ask the mediator to develop with them a proposal to prevent or resolve the dispute.</p> <p>The mediator 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.</p>	p. 4 p. 7 p. 8 p. 9 p. 10 p. 11 p. 29
Sec. 606	<p>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.</p> <p>To claim the privilege of non-compellability, the mediator must be certified by a body recognized by the Minister of Justice. In addition, the mediator must be subject to rules of professional conduct and be required to take out civil liability insurance or provide some other form of security to cover injury to third persons.</p>	p. 4 p. 11 p. 12 p. 15 p. 30
Sec. 607	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 the 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.	p. 4 p. 11

<b>CONDUCT OF MEDIATION</b>		
Sec. 608	Mediation begins, without formality, on the day on which the parties agree to enter into a mediation process by mutual agreement or at the initiative of one of them. In the latter case, failure by the other party to respond constitutes a refusal to participate in the mediation process.	p. 4 p. 30
Sec. 609	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.  The parties must undertake to attend all meetings to which they are invited by the mediator. They may, if all consent, even tacitly, bring persons whose contribution may be useful for the orderly progress of the mediation process and helpful 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 that they can be reached in sufficient time to give their consent.	p. 4 p. 9 p. 15
Sec. 610	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 the mediation process at any time, in the interests of the parties or of one of the parties.	p. 4 p. 8 p. 9 p. 10 p. 13 p. 18 p. 29 p. 30
Sec. 611	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.	p. 4 p. 12
Sec. 612	If the parties enter into mediation while a judicial application is already in progress, they must agree to a stay of the proceeding, provided the law or the court seized permits it, until the end of the mediation process.	p. 4 p. 29
<b>END OF MEDIATION</b>		
Sec. 613	A settlement agreement contains the undertakings of the parties and terminates the dispute. The settlement agreement constitutes a transaction only if the subject matter and the circumstances permit and the parties' wishes in that respect are clear.  The mediator must see that the parties understand the agreement.	p. 4 p. 8 p. 13 p. 16

Sec. 614	<p>A party may withdraw from or put an end to the mediation process at any time at its own discretion and without being required to give reasons.</p> <p>The mediator, too, may put an end to the mediation process if, in the mediator’s opinion, it is 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.</p>	<p>p. 4 p. 10 p. 13 p. 15 p. 16 p. 18 p. 30</p>
Sec. 615	<p>As soon as the mediation process ends, the mediator renders an account to the parties of the sums received and determines the costs, which are borne equally by the parties, unless a different apportionment has been agreed, or has been ordered by the court if the mediation process took place in the course of a proceeding.</p> <p>The costs include the mediator’s fee, travel expenses and other disbursements, as well as any costs related to expert evidence or other interventions agreed by the parties. All other expenses incurred by a party are borne by that party.</p>	<p>p. 4</p>
<b>SPECIAL PROVISIONS APPLICABLE TO FAMILY MEDIATION</b>		
Sec. 616	<p>Mediation of a family dispute that is entered into on a purely private basis or without a judicial application being brought may only be conducted by a family mediator certified in accordance with the regulations under article 619. If a child’s interests are at stake, the mediator is required to inform the parties that they must participate in a parenting and mediation information session as provided in article 417.</p>	<p>p. 4 p. 5 p. 15</p>
Sec. 617	<p>Mediation sessions take place in the presence of both parties and a mediator or, if the parties so agree, two mediators. The sessions may also, if all agree, take place in the presence of a single party, in the presence of the child concerned or in the presence of other persons who are neither experts nor advisers if their contribution may be helpful in resolving the dispute.</p> <p>If required by the circumstances, the mediator may, with the parties’ consent, use any appropriate, readily available technological means.</p> <p>When the mediation process ends, the mediator files a dated and signed report with the Family Mediation Service, and delivers a copy to the parties. The report records the presence of the parties and the points, if any, on which an agreement was reached. It contains no other information.</p>	<p>p. 4 p. 12 p. 13 p. 16 p. 19</p>
Sec. 618	<p>If the mediator considers that a proposed settlement agreement is likely to lead to a dispute in the future or cause prejudice to one of the parties or to the children, the mediator is required to invite the parties to remedy the situation and, if necessary, to seek advice from a third person. If convinced that the possibility of prejudice cannot be eliminated, the mediator may put an end to the mediation process.</p>	<p>p. 4 p. 8 p. 10 p. 13 p. 16 p. 18 p. 30</p>

<p>Sec. 619</p>	<p>The Government designates the persons, bodies or associations that may certify family mediators and, by regulation, determines the standards with which those persons, bodies or associations must comply.</p> <p>The Government, by regulation, may define the conditions mediators must satisfy to be certified and determine the standards with which certified mediators must comply in the exercise of their functions, as well as the sanctions applicable for non-compliance.</p> <p>The Government, by regulation, may also determine what services are payable by the Family Mediation Service, set the tariff of professional fees the Service may pay certified family mediators and determine the time limit and procedure for claiming such professional fees and the applicable terms of payment. In addition, it may determine the tariff of professional fees the parties may be charged for services not covered by the Family Mediation Service or for services provided by a mediator designated by the Service or by more than one mediator.</p> <p>The Minister of Justice, by order, determines the conditions subject to which technological means may be used by the Family Mediation Service, and specifies other services the Service may provide as well as the applicable conditions.</p>	<p>p. 4 p. 7</p>
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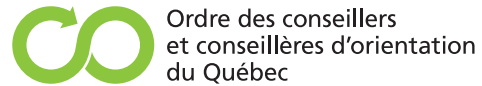




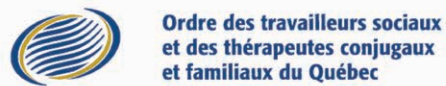
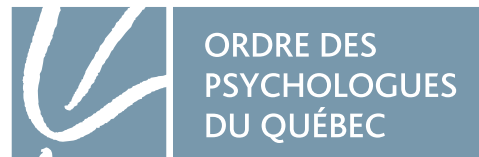


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Une présence qui fait la différence



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