

LEGAL FEES INSURANCE ALSO COVERS DPR PROCESSES

If you have legal fees insurance, you may consult the lawyer of your choice and together, explore the best ways of settling your dispute. Mediation and other DPR processes are covered by the insurers. For more information, phone 1 866 954-3529.

A FEW QUESTIONS

■ Can all lawyers advise me on participatory justice services?

- Yes, according to the *Code of Professional Conduct of Lawyers*, it is their duty to advise and inform their clients about the available ways and means of resolving their dispute, including the opportunity to opt for dispute prevention and resolution (DPR) processes. Not all lawyers are certified mediators or practise collaborative law. However, your lawyer must inform you and may, if necessary, refer you to a lawyer who is experienced in the DPR process that suits you.

■ How can I know whether DPR processes are more advantageous to me than going to court?

- At the time of the very first consultation and all throughout the mandate, your lawyer can inform you about the advantages of each DPR process so that you can make a well-informed choice.

■ If I opt for another DPR process, do I lose my recourse to the courts?

- No, you can go before the courts at any time with all the DPR processes except with an arbitration process or a med-arb process—a process combining mediation and arbitration—which are both final and without appeal.

FIRST-HAND EXPERIENCES

Lawyers have made it a point of law to inform their clients who, in turn, obtained justice in another way!

“A while ago, I bought a house. As I had bought it in winter, I wasn’t able to thoroughly inspect the foundations. Everything seemed to be all right until we were hit with the first onslaught of heavy rainstorms. Water seeped into the basement; it was a case of hidden defect. I wrote to the former owner to explain the situation to him and suggest that a building specialist come and evaluate the scope of the corrective action to be taken. The former owner refused. Fortunately, with my legal fees insurance, I was able to seek the advice of an experienced lawyer in that field and he explained to me that it was preferable to consult a specialist and attempt to resolve the dispute with the seller through mediation. And in the end, it turned out well... I settled with the seller, and all the consultant’s fees and those of my lawyer were covered by my legal fees insurance. I’m happy I resorted to mediation, as I was able to avoid both the stress and the costs.”

– Diane from Montréal

“I had a tough time when I headed off on vacation and my dream RV – which I had bought second-hand – turned out to be a real lemon. It had been skilfully touched up to give the impression that it was in good condition, but halfway to my destination, it died on me. I’ll leave it to your imagination how much that can spoil a vacation to have to tow your RV, sleep and eat at a hotel, when everything was already reserved elsewhere. I decided to take legal action against the dishonest seller, by hiring a lawyer. He sent the seller a formal demand and then suggested that we negotiate a settlement. In the end, the sale was cancelled. I really appreciated being advised to opt for negotiations, as I wasn’t ready to invest a large amount of money to fight for my rights.”

– Robert from Baie-Comeau

Before things
get out of hand,
consult a lawyer,
your expert
in solutions.

HOW TO FIND A CERTIFIED LAWYER-MEDIATOR?

There are over 1,000 lawyer-mediators certified by the Barreau du Québec. Some are certified in civil and commercial mediation, while others specialize in family mediation or small claims. Further details may be obtained online at www.barreau.qc.ca/en (in the “For the public” section, under “Finding a lawyer or a lawyer-mediator”) or by phoning 514 954-3411 or toll-free: 1 844 954-3411.

Maison du Barreau

445 Boulevard Saint-Laurent
Montréal, Québec H2Y 3T8

Phone 514 954-3411
Toll-free 1 844 954-3411

infobarreau@barreau.qc.ca
www.barreau.qc.ca



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We make it a point of law
to give you choices

Participatory justice

Barreau
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WHAT IS PARTICIPATORY JUSTICE?

Participatory justice is a customized way of asserting your rights and making it easier for you to access justice. With the assistance of your lawyer, you choose the dispute prevention and resolution (DPR) process that is best for you, based on your needs, your interests and your pocket.

Through participatory justice, you can opt for negotiations, collaborative law, mediation, mediation-arbitration (med-arb), a settlement conference, arbitration or, as a last resort, a trial before the courts. Asking your lawyer to opt for participatory justice is trying to find the best solution for your situation.

FOR A CLEAR UNDERSTANDING

The Barreau du Québec has been promoting dispute prevention and resolution (DPR) processes – or participatory justice – since 2006. This term emphasizes the positive aspects of justice (the word “justice” = what we are all seeking, and the word “participatory” = the aspect of participation of the client together with his lawyer). You will also hear about private dispute prevention and resolution processes, appropriate dispute resolution processes, alternative dispute resolution processes, etc. Although each of these expressions is slightly different, they are covered in all the processes described in this leaflet.

Asking your lawyer to opt for participatory justice is trying to find the best solution for your situation.

ARE YOU READY FOR PARTICIPATORY JUSTICE?

► Are you nervous about the idea of having to go to court?
Yes No

► Do you think the only way of settling a dispute is by going to court?
Yes No

► Do you want to keep on good terms with the person with whom you are having a dispute?
Yes No

► You have little time and resources to invest to settle your dispute?
Yes No

If you answered “yes” to at least one of these questions, you are ready to sit down with your lawyer and explore participatory justice as well as its various DPR processes.

Since the new *Code of Civil Procedure* came into force in January 2016, your lawyer has been under obligation to inform you of these processes and everyone faced with a legal dispute must first try and reach a settlement before turning to the courts.

You and your lawyer will work together to determine the best way of preventing or resolving your dispute.

PARTICIPATORY JUSTICE: DISPUTE PREVENTION AND RESOLUTION (DPR) PROCESSES

NEGOTIATIONS

Negotiations are part of everyone’s everyday life. You regularly negotiate with your spouse, your employer, your children or when you do business and, in most cases, you reach an agreement. It is on this basis that the justice system also uses negotiation techniques.

Negotiations are the foundation of all dispute resolution processes. They consist of trying to reach an agreement with the other party by discussing and agreeing to make certain compromises. All throughout the legal process, you may negotiate with the opposing party. You may even initiate negotiations before taking legal action.

In a number of cases, negotiations may lead to an out-of-court settlement. If that is the case, make sure all the details and all the conditions of the agreement are included in a written document signed by all the parties.

MEDIATION

Mediation is a dispute resolution process that involves exploring solutions rather than trying to determine who is right and who is wrong.

The first condition for mediation to be carried out is for all the parties to accept and opt for the mediation process. This means that they agree to have another person – a neutral and impartial third party called a “mediator” – help them find a solution to their dispute. Contrary to a settlement conference, mediation may take place even if legal action has not been initiated.

COLLABORATIVE LAW

Collaborative law is still little known and little used and is often confused with mediation and negotiation; nevertheless, it is a very distinct dispute resolution process that has proven its worth in the U.S.

In collaborative law, the people involved in a dispute and their lawyers must agree, in advance, and in a contract, that they will find a satisfactory solution without having recourse to the courts, failing which the lawyers will withdraw from the case. The parties must also reveal all necessary information for resolving the dispute and must sign a confidentiality clause in order to avoid having what is said in negotiations from being used at a later time. In the collaborative law process, the negotiation sessions may be held between the people involved, in the presence of their lawyer or solely between lawyers.

CONCILIATION AND THE SETTLEMENT CONFERENCE

Conciliation is very similar to mediation; however, the conciliator generally doesn’t propose any solutions, as the mediator does.

Within legal proceedings, the judge sometimes plays the role of conciliator during a special hearing called a “settlement conference”.

A settlement conference may be held at any stage of the legal process if these two conditions are met:

- legal action must have been taken
- both parties must give their consent to proceed

ARBITRATION

Arbitration is a decisive process whose outcome will be final and binding (that is, without appeal). Arbitration is somewhat like a private trial. The arbitrator(s), who are chosen by the parties, take on the role of judge.

MEDIATION-ARBITRAGE (MED-ARB)

Med-arb is a process during which the parties reach an agreement, in advance, that specifies the mandate of the mediator (a neutral, third party) as well as the arbitration mandate in case the mediation process reaches a deadlock. The decision will then be final and binding.

More information on DPR processes and participatory justice may be found at www.yourjustice.ca.

THE ADVANTAGES OF DPR PROCESSES

- You play a greater role in resolving your dispute.
- Both parties are satisfied and have the chance to avoid a winner-loser situation.
- Your case remains confidential, in contrast to what would happen if you go to court.
- The parties can more easily maintain good relations after the dispute is resolved.
- The dispute is settled more quickly.
- The overall cost is generally lower if you don’t have to go to court to plead the case.

BEFORE THINGS GET OUT OF HAND, CONSULT A LAWYER

All too often, we consult a lawyer only once a situation has deteriorated. And yet a lawyer is there to get you out of a deadlock, and especially, to prevent you from falling into one.

A lawyer who is a member in good standing of the Barreau du Québec informs you about the laws and regulations, advises you and, if necessary, represents you in court. Above all, he helps you find the best solution. You and your lawyer will work together to determine the best way to prevent or resolve your dispute.

Consulting a lawyer in good time may prevent you from facing many problems as well as loss of time and money.

The Barreau du Québec has published helpful advice for maintaining excellent client-lawyer relations. Check it out at www.barreau.qc.ca/en.

In addition, the Barreau provides three Client Profile information sheets to the public and its members – general, family, business – in order to better identify clients’ needs and expectations in relation to the justice system as well as evaluate how much they know about dispute prevention and resolution processes and give them information in this regard. These information sheets are available on the Barreau’s Website (www.barreau.qc.ca/en), under “For the public”.