

Barreau  
du Québec



# Guide on the Standards of Practice of Civil and Commercial Mediation



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To ensure the protection of the public, the Barreau du Québec oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.

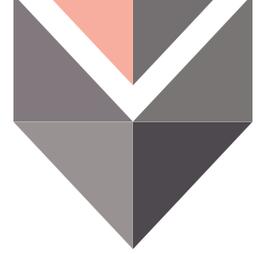
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## 1 > INTRODUCTION

Civil and commercial mediation is being used increasingly by the public to settle disputes privately.

A pioneer in private dispute resolution processes, the Barreau du Québec was ahead of its time when, in 1999, it adopted accreditation criteria for its members seeking to become mediators. According to these criteria, any member can become an accredited mediator - in their field of practice - provided that they (a) are in good standing with the Barreau du Québec, (b) are insured with the *Fonds d'assurance responsabilité professionnelle du Barreau du Québec*, save and except for those lawyers practicing as public servants who are exempt from this insurance obligation, and (c) have followed at least 40 hours of training in civil, commercial or labour mediation recognized by the Barreau's Accreditation Committee.

To this date, more than 830 accredited civil and commercial mediators offer their services across the province. The Barreau du Québec maintains a current list of the province's accredited mediators on its website<sup>1</sup>.

The website also includes a catalogue<sup>2</sup> of the Barreau du Québec's many projects on mediation and participatory justice.

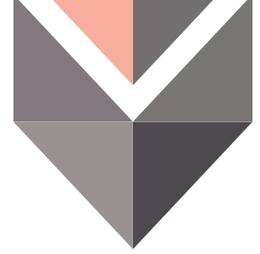
The 2016 amendments made to the *Code of Civil Procedure* mark an important milestone for mediation and other processes of dispute resolution in Quebec. The obligation for parties to consider private dispute resolution processes before instituting legal proceedings necessarily changes the conduct of litigation files. Generally speaking, articles 1 to 7 of the *Code* are important tools in the development of private dispute resolution processes in Quebec.

The Code provides that parties who agree to enter into mediation will determine, with the mediator, the procedure applicable to them. If required, the rules of Book VII of the *Code* will be used to complete the procedure chosen by the parties. The present *Guide* serves to complete the rules of the *Code* that govern the conduct of mediation.

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1. [www.barreau.qc.ca/en/public/trouver/civil-commercial/index.html](http://www.barreau.qc.ca/en/public/trouver/civil-commercial/index.html)

2. [www.barreau.qc.ca/pdf/publications/bilan-justice-participative.pdf](http://www.barreau.qc.ca/pdf/publications/bilan-justice-participative.pdf)



## 2 > STANDARDS OF PRACTICE

### 2.1 OBJECTIVE AND SCOPE OF STANDARDS OF PRACTICE

The *Guide on the Standards of Practice of Civil and Commercial Mediation* has the following objectives:

- » To establish standards of conduct and duties to be respected by mediators in relation to their clients and the public, regardless of the procedure chosen by the parties;
- » To provide tools for mediators to complete their work in a conscientious, diligent and efficient manner;
- » To define, for the public and for lawyers, the terms and conditions applicable to the functions and duties of a civil and commercial mediator;
- » To optimise the quality of services offered by mediators.

The *Guide* serves to complement the provisions of the *Code of Civil Procedure*, the *Code of Professional Conduct of Lawyers* and the provisions of other professional legislation. The lawyer-mediator, like any other member of the Barreau du Québec, remains subject to these provisions.

The principles found in this *Guide* apply, with any necessary adaptations, to mediations in *Small Claims Division of the Court of Québec*, or to mediations carried out using technological means, including videoconference and conference calls, etc.<sup>3</sup>

In this *Guide*, the expression “mediator” designates any lawyer-mediator acting in civil or commercial disputes.

### 2.2 DISTRIBUTION AND AVAILABILITY OF THE *GUIDE*

Mediators must inform their clients of the existence of the standards of practice.

A copy of the *Guide* should be made available to the mediator’s clients at its place of business. At the request of a client, the mediator should remit a copy of the *Guide* or provide the client with the website address at which the client may access the *Guide*. The link to the *Guide* may be found at [www.barreau.qc.ca/fr/publications/avocats](http://www.barreau.qc.ca/fr/publications/avocats).

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3. In this respect, consult the *Manuel de pratique de la médiation civile et commerciale à distance* of the Barreau du Québec.



## 3 > THE GENERAL FRAMEWORK OF CIVIL AND COMMERCIAL MEDIATION

### 3.1 DEFINITION AND OBJECTIVES OF CIVIL AND COMMERCIAL MEDIATION

Civil and commercial mediation is a confidential, flexible and voluntary dispute resolution process by which an impartial third party, without any decision-making power, assists the parties in a dispute. The mediator helps the parties to the dispute to engage in a dialogue and to cooperate in order to arrive at a mutually satisfactory agreement.

At no time may the mediator give a legal opinion, force the parties to enter into an agreement or make a decision for one or both of the parties.

### 3.2 ROLE OF THE PARTIES

The parties choose their mediator jointly or through a third party. They then determine, with the help of the mediator, the process that suits them.

The parties also ensure, with the collaboration of the mediator, that the process decided upon is proportional to the nature and complexity of the dispute, in terms of the cost and the time required to arrive at an agreement, as the case may be. The parties share the fees of the mediator equally, unless there is an agreement to the contrary.

Any party entering into a mediation process must do so in good faith. Over the course of the process, the parties must actively cooperate to arrive at a solution and must participate in all meetings convened by the mediator.

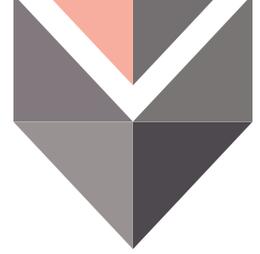
The parties must be transparent, especially with respect to relevant information and documents in their possession. In respect of both their claims and the settlement, the parties must respect one another's rights and freedoms as well as other rules of public order.

Each party may be accompanied by a person whose contribution would be useful to the efficient conduct of the mediation process and to the settlement of the dispute. The parties may consult a third party before signing any agreement.

The parties must preserve the confidentiality of anything that is said, written or that occurs in the course of the mediation, unless the parties agree in writing or unless the law requires otherwise.

The parties who accept to participate in mediation do not renounce their right of action before a court of law. Mediation does not interrupt prescription. The parties may agree, through a signed agreement, to waive prescription already acquired and the benefit of time elapsed. They may also agree, through a signed agreement, to suspend prescription, but never for a period longer than six months.

A party may, at any time, withdraw from the mediation process or put an end thereto at its sole discretion. The party is under no obligation to disclose the reasons leading to its withdrawal.



### 3.3 THE ROLE OF THE MEDIATOR

The mediator must help the parties to:

- » Engage in a dialogue;
- » Clarify their points of view;
- » Determine the sources of the dispute;
- » Identify their needs and interests;
- » Explore different solutions;
- » Reach, if appropriate, a complete or a partial agreement that is mutually satisfactory;
- » Verify the parties' understanding of the agreement and encourage them to consult a third party if it is deemed necessary.

## 4 > THE SPECIAL FEATURES OF CIVIL AND COMMERCIAL MEDIATION

### 4.1 THE MEDIATOR IS IMPARTIAL

The mediator acts impartially and must maintain the parties' confidence throughout the process. The mediator must not show favoritism, or prejudice towards a party, whether in word, attitude or action.

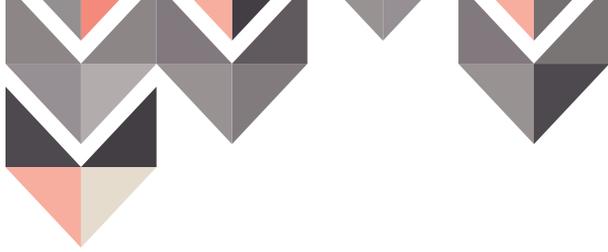
The mediator must inform the parties of any conflict of interest or any situation that may be perceived as a real or apparent conflict of interest or that may cast doubt on the mediator's impartiality. The mediator must note these disclosures in the contract to mediate.

This information must be disclosed as soon as the mediator becomes aware of it, whether at the beginning or during the mediation.

After disclosing a conflict of interest, the mediator must refuse the mandate or withdraw from the mediation unless all of the parties agree otherwise.

### 4.2 MEDIATION IS CONFIDENTIAL

The mediator must preserve the confidentiality of everything that is said, written or that occurs during the mediation process, unless the parties agree in writing or unless the law requires otherwise. The contract to mediate that is appended to this document provides that nothing that is said or written during the mediation process may be submitted in evidence during judicial proceedings. All communication prior to the signing of the contract to mediate are confidential as being covered by the confidentiality of attempts to settle any dispute.



### 4.3 THE PARTICIPANTS CANNOT BE COMPELLED TO TESTIFY

The general rule is that the mediator and those who partake in the mediation cannot be compelled to testify in arbitration, administrative or judicial proceedings, whether they are related to the dispute or not, about anything they hear or learn in the course of the mediation process. Nor can the mediator or the participants be compelled to produce a document that was prepared or obtained in the course of the mediation process, unless: (i) the law requires its disclosure; (ii) a person's life, safety or personal integrity is at stake; (iii) or its disclosure is necessary for the mediator's defense 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<sup>4</sup>.

## 5 > THE MEDIATOR'S OBLIGATIONS

The mediator must act with integrity, respect and fairness. The mediator must listen to the parties impartially and with a view to understanding their situation.

When considering the social context of the law, the mediator must remain sensitive to and aware of social and cultural factors, including a party's vulnerability (age, economic status, membership in a minority or marginalized group, disability or deficiency, etc.) that may affect how the mediation will unfold.

Mediators are invited to contribute to the advancement of mediation by encouraging education, research, publications and information, and in making their own personal contributions.

Mediators must keep their knowledge of dispute prevention and resolution up to date.

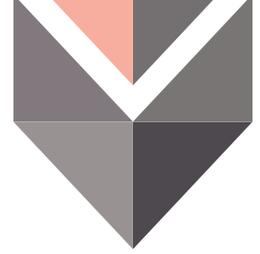
### 5.1 MEDIATORS' GENERAL OBLIGATIONS TOWARDS THE MEDIATION PROCESS

Mediators must:

- » Promote communication between the parties;
- » Clarify the issues and purpose of the mediation with the parties;
- » Promote a discussion and evaluation of the parties' options;
- » Help the parties evaluate the likely consequences of the options considered;
- » Help the parties reach an agreement based on their free and informed consent.

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4. The general rule of non-compellability is subject to an exception, however. The rule does not apply when the testimony of the parties to the mediation is required to prove that a settlement was reached in the mediation, and to prove the scope of the settlement. According to the Supreme Court of Canada in *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, should the parties to the mediation wish not to be bound by this exception, they must clearly and expressly provide so in the contract to mediate. Note that the Supreme Court of Canada did not rule on the particular question of the mediator's compellability, in any case.



## 5.2 AT THE BEGINNING OF THE MEDIATOR'S INVOLVEMENT

At the outset, the mediator must:

- » Explain how mediation works, the mediator's role and his or her own approach, and provide information on the advantages and the limitations of mediation;
- » Check for real or perceived conflicts of interest;
- » Inform the parties that either one of them or the mediator may suspend or end the mediation at any time;
- » Inform the parties of the cost and expected length of the mediation;
- » Sign a fee and costs agreement with the parties;
- » Inform the parties of their role, as well as the role of lawyers, experts, and anyone else who may participate in the mediation (including observers and people who accompany the parties);
- » Plan the mediation sessions and ensure the participants' availability;
- » Determine with the parties the rules applicable to and the length of the mediation process, and what to include in the contract to mediate;
- » Finalize and sign the contract to mediate with the parties (see the example appended to this guide).

## 5.3 DURING THE MEDIATION

Throughout the process, the mediator:

- » Has a duty to treat the parties fairly, and must ensure that each party has an opportunity to present its point of view;
- » Helps the parties evaluate the consequences of the options they are discussing and encourages them to obtain outside advice;
- » May provide general legal information to the parties but cannot provide a legal opinion;
- » Encourages the parties to obtain independent legal advice, if necessary;
- » Encourages the parties to demonstrate transparency and to disclose relevant information;
- » Works to preserve the parties' trust;
- » Suspends or puts an end to the process if the mediator feels that proceeding will harm one of the parties or that the mediation is not leading to an agreement.



## 5.4 AT THE END OF THE MEDIATION

The mediation will end when the parties have reached an agreement, when one or both parties decide to end the process and so inform the other(s), or when the mediator confirms the end of the mediation.

At the end of the process, the mediator:

- » Ensures that the agreement includes all of the parties' undertakings. The mediator must not comment on the value of the agreement or the need to reach one as this depends solely on the will of the parties;
- » Informs the parties of the importance of writing out and signing their agreement, as well as the different forms that such a writing could take;
- » Ensures that each party understands the agreement and knowingly accepts it;
- » Informs the parties, if it is the case, that their agreement is a transaction pursuant to the *Civil Code of Quebec*;
- » In the case of a transaction, informs the parties that they can force the execution of their transaction by having it homologated;
- » Drafts the agreement at the parties' request;
- » Assists the parties, at their request, with the preparation of a case protocol when the mediation does not lead to an agreement or to a partial agreement;
- » Confirms the end of the mandate.

## 5.5 AFTER THE MEDIATION

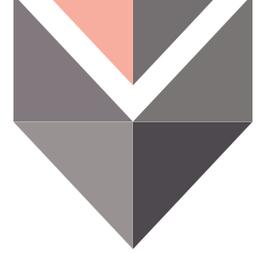
Once the mediation has ended, the mediator must not provide a legal opinion or represent one of the parties in any matter relating to the mediation or in any other dispute between the parties.

The parties may mandate the mediator to have the agreement homologated pursuant to article 528 of the *Code of Civil Procedure*.

The mediator must render an account to the parties of the sums received and determine the costs of the mediation.<sup>5</sup>

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5. Article 615 *Code of Civil Procedure*.



## 6 > RELATIONS BETWEEN THE PARTIES

### 6.1 INDIVIDUAL MEETINGS (CAUCUS)

Mediators may, when they consider it to be useful, hold individual meetings (caucus) with either of the parties, who themselves at any time may request to meet with the mediator in a confidential and private setting.

The same rules apply when the mediator determines it to be appropriate to meet any other participant to mediation.

The mediator must inform the parties when he or she communicates privately with the other participant.

In situations where the mediator is authorized to disclose what was discussed in the private meeting, the mediator may only disclose the elements so authorized by the disclosing party.

### 6.2 LAWYERS AND THE PARTIES

#### 6.2.1 Presence of the Parties' Lawyers

The mediator informs the parties that they may participate in the mediation with or without their lawyers. The parties must, at all times, advise the mediator of their decision in this regard so as not to cause any surprise to the mediator or the parties.

#### 6.2.2 Duties of Lawyers

The lawyer must adopt the principles provided in article 2 of the *Code Civil of Procedure* and remind his or her client that they must participate in good faith, demonstrate transparency towards the other parties with respect to, namely, information they hold, and cooperate actively towards reaching a solution.

The lawyer ensures that the mediation process undertaken is proportionate with regards to both time and cost required as well as the nature and complexity of the dispute.

#### 6.2.3. Assisting the Client During the Mediation Process

A party's lawyer may be actively involved in the search for a competent mediator, in the elaboration of the process, in the conclusion of the agreement for the mediator's services, and as required, in the drafting and execution of any agreements. Lawyers will also advise on whether their clients' goals and needs are satisfied by the type of mediation proposed by the mediator.

#### 6.2.4 Confidentiality During Mediation

The lawyer must preserve the confidentiality of everything that is said, written or that occurs during the mediation process, unless the parties agree in writing or unless the law requires otherwise. He or she must sign a confidentiality agreement at the request of the mediator.

#### 6.2.5 Collaboration with the mediator

The lawyer must cooperate with the mediator and respect his or her authority. Before criticizing the process, the mediator, the mediator's interventions or even putting an end to the mediation, the lawyer may request a caucus, either alone or in the presence of the party he or she represents, in order to advise the mediator of their concerns or questions.



### 6.2.6 Communications Between the Parties and their Lawyer or Lawyers

The parties may, at their own initiative, at the suggestion of the mediator or at the request of their lawyer, suspend a session to speak privately among themselves. These decisions to suspend the mediation must be taken in good faith and not unduly delay the mediation.

The mediator may request a caucus with the lawyers in the absence of their clients and the parties may request the same.

### 6.2.7 Suggestion of a Mediator to Take Recourse in External Services

The mediator may suggest that the parties use the services of a lawyer so that they can make clear and informed choices, to draft an agreement or to assure execution of the latter. He can also encourage the parties to consult other third parties for the same reasons.

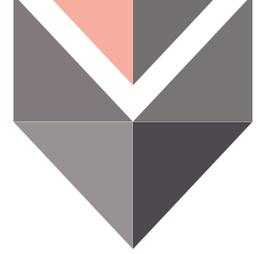
## 7 > THE CONTRACT TO MEDIATE

### 7.1 CONTENT OF THE CONTRACT

The contract to mediate must be written and signed by the parties as well as the mediator (see the suggested model in Schedule 1).

The contract to mediate contains at least the following elements:

- » Identification of the parties;
- » The goal of the mediation and the voluntary nature of the process;
- » The role of the mediator and impartiality;
- » An undertaking to attend the mediation and the parties' authority to finalize an agreement
- » A confidentiality agreement regarding all verbal and written communications during the mediation process, to be signed by the parties and all individuals participating in the process;
- » The compellability or not of the parties to prove that a settlement was concluded in mediation;
- » A renunciation of the ability to call the mediator to testify in any proceedings, including to prove that a settlement was concluded in mediation;
- » The scope of individual sessions, known as caucuses;
- » The impact of the mediation on prescription and procedural deadlines;
- » The rules of interruption or suspension of the process;
- » The length of the process;
- » The legal fees and disbursements of the mediation and the methods of payments if any;



## SCHEDULE 1 > SAMPLE CONTRACT TO MEDIATE

BETWEEN:

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-and-

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(the parties)

AND

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((the mediator)

We the undersigned understand that mediation is a voluntary process whose goal is to allow the parties to reach an agreement and to settle a dispute.

We freely agree to submit the dispute(s) existing between us to the mediation process.



## 1. ROLE OF THE MEDIATOR

We recognize that the mediator will assist the parties in the following:

- » To engage in dialogue;
- » To clarify our points of view
- » To determine the source of the conflict
- » To identify our needs and interests
- » To explore the possibilities of resolution
- » To come, if it is appropriate, to either a full or partial agreement that is mutually satisfactory.
- » To confirm our understanding of the agreement and to encourage consulting a third party.

## 2. IMPARTIALITY

The mediator will act, at all times, in a neutral and impartial manner. We recognize that while the mediator has a legal background, he or she will not provide any legal opinion regarding our respective rights or obligations.

## 3. ATTENDANCE AT MEDIATION SESSIONS

If they so wish, the parties will attend the mediation session with their advisors. However, we will obtain the consent of the other parties before the commencement of the mediation process and otherwise, as soon as possible.

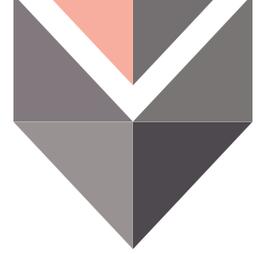
## 4. AUTHORITY TO ENTER INTO AN AGREEMENT

In order for the mediation to be effective, we will assure that the persons having the authority and capacity to enter into an agreement are present during the mediation process, otherwise the parties will indicate how they will obtain the necessary authorizations to conclude an agreement.

## 5. CONFIDENTIALITY

We acknowledge that the content of our meetings, our interviews and our file(s) is confidential. We undertake not to use, as evidence before any court(s) any documents contained in the file without the prior consent of the parties.

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.



The mediator undertakes to keep confidential all information divulged in the mediation except for purposes of research, teaching, statistical or for general evaluation services of the process of prevention and settlement of conflicts or of its success(s). In no circumstances can any personal information be divulged.

#### 6. NON-COMPELLABILITY (OPTIONAL CLAUSE)\*

We understand that the mediator cannot be compelled to appear as a witness in eventual court procedures, including testimonies on the terms and conditions of the agreement or its coverage.

We understand that we cannot be forced to divulge in any administrative, judicial or arbitration proceeding, whether concerning our conflict or not, anything that was said and things of which we received knowledge during the mediation.

\*We understand that we cannot be called as a witness to demonstrate the existence of an agreement entered into in mediation or its coverage.

**OR**

\*We expressly refuse to be called as a witness to testify to prove the existence of an agreement or its coverage.

#### 7. CAUCUSING

We understand that if the mediator deems it worthwhile, he or she may meet privately with one or either of the parties (a caucus), who, themselves may, at any time, request a private meeting (caucus) in full confidentiality.

#### 8. DELAYS FOR PRESCRIPTION

Prescription is neither suspended nor interrupted by mediation.

**OR**

We agree to suspend prescription for the duration of the mediation, but it may not extend beyond \_\_\_\_\_ (max 6 months). If no agreement is reached that settles the dispute, prescription will recommence beginning on the date of reception of a notice from either party informing that they are ending the mediation or the reception of a notice from the mediator informing that he or she is ending the mediation.

In the event that the parties do not reach an agreement within a delay of six months, they may not agree on a new agreement regarding prescription.

#### 9. SUSPENSION OF JUDICIAL PROCEEDINGS

If the judicial proceedings are commenced, we will examine the appropriateness of suspending certain delays with the goal of completing the mediation process and we will obtain the court's authorization if necessary.



## 10. VALUE OF THE AGREEMENT

We understand that it is not up to the mediator to judge the value or the appropriateness of the agreement, which remains the expression of the will of the parties. The mediator may suggest that the parties either consult a lawyer in order to ensure that they are making free and informed decisions before the drafting or the execution of the agreement. The mediator can also encourage the parties to consult any other person or expert in the same spirit.

## 11. END OF MEDIATION

Mediation ends either at the conclusion of an agreement, by the mutual decision of the parties or by the unilateral decision of one party who will inform the other party, or by the mediator.

## 12. FEES (OPTIONAL)

We accept to pay the cost of the mediation as described in the present contract in the following proportions.

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The fees include all efforts made to bring the parties to actively participate in the mediation process. Advances for fees and disbursements may be required at any time by the mediator.

## 13. CONFIDENTIALITY OF THE CONTRACT

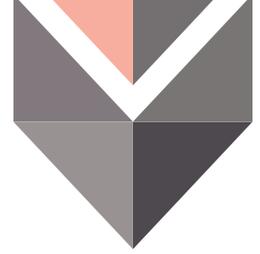
The present contract is confidential.

WE ACCEPT THE TERMS OF THIS CONTRACT AND WE

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ .

\_\_\_\_\_  
(the parties)

\_\_\_\_\_  
(the mediator)



## CONFIDENTIALITY UNDERTAKING

Please see below an undertaking to be signed by anyone in the room who is not a party to the mediation or is not the mediator. It is signed by any and all persons attending the mediation such as legal counsel, accountants, stagiaire, or anyone else.

1. I the undersigned \_\_\_\_\_ acknowledge having been informed that \_\_\_\_\_ and \_\_\_\_\_ have decided to engage the services of a mediator whose role shall be to assist them in settling a dispute which has arisen between them.
2. Given that I will participate in the mediation process, I undertake to keep the proceedings confidential. I acknowledge that the verbal and written declarations made within the framework of the mediation are privileged and confidential, and will not be admissible as proof during any legal or other proceeding.
3. I acknowledge as well that the mediator will not be called as a witness during any legal or other proceeding;

And I have signed:

In Montreal, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature



## SCHEDULE 2 > GENERAL FRAMEWORK OF CIVIL PROCEDURE

### TITLE I

#### *PRINCIPLES OF PROCEDURE APPLICABLE TO PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES*

1. 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.

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.

Parties must consider private prevention and resolution processes before referring their dispute to the courts.

2. Parties who enter into a private dispute prevention and resolution process do so voluntarily. They are required to participate in the process in good faith, to be transparent with each other, including as regards the information in their possession, and to co-operate actively in searching for a solution and, if applicable, in preparing and implementing a pre-court protocol; they are also required to share the costs of the process.

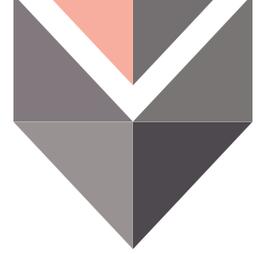
They must, as must any third person assisting them, ensure that any steps they take are proportionate, in terms of the cost and time involved, to the nature and complexity of the dispute.

In addition, they are required, in any steps they take and agreements they make, to uphold human rights and freedoms and observe other public order rules.

3. 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.

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.

4. Parties who opt for 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.



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.
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.
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.

## **BOOK VII**

### ***PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES***

#### **TITLE I**

#### ***MEDIATION***

#### **CHAPTER I**

#### ***ROLES AND DUTIES OF PARTIES AND MEDIATOR***

- 605.** A mediator is chosen, directly or through a third person, by mutual agreement of the parties.

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.

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.



606. 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.

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.

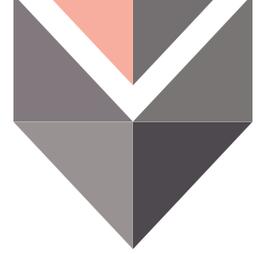
607. Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the mediation record, or the right to object to the use of a document in the course of a mediation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

## CHAPTER II *CONDUCT OF MEDIATION*

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.

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.



**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.

**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.

**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.

### CHAPTER III *END OF MEDIATION*

**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.

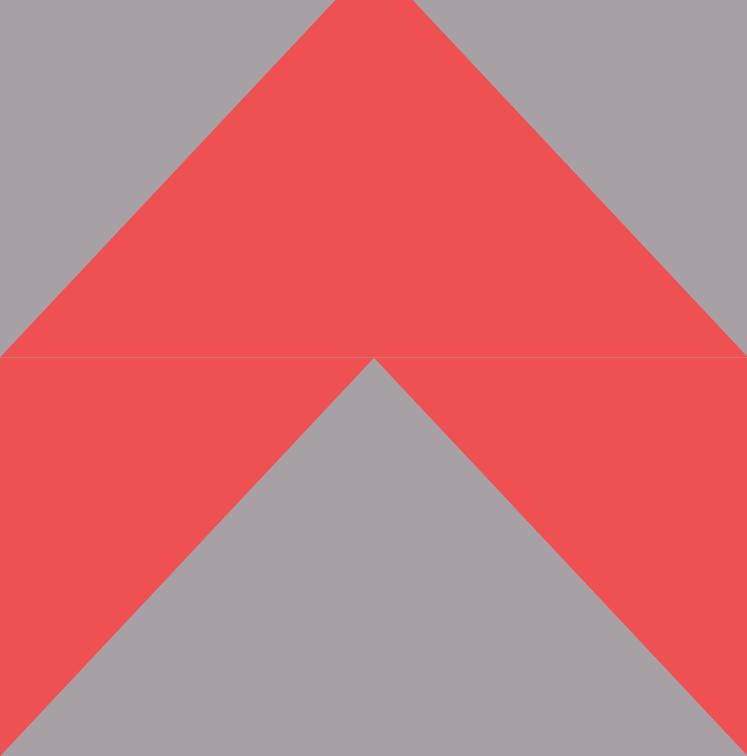
**614.** A party may withdraw from or put an end to the mediation process at any time at its own discretion and without being required to give reasons.

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.

**615.** 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.

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.



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