



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 65
(1997, chapter 42)

**An Act to institute, under the Code of
Civil Procedure, pre-hearing mediation
in family law cases and to amend
other provisions of the Code**

**Introduced 14 November 1996
Passage in principle 9 December 1996
Passage 13 June 1997
Assented to 19 June 1997**

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EXPLANATORY NOTES

This bill proposes amendments to the Code of Civil Procedure principally to promote mediation in family law cases.

Except in certain circumstances related, in particular, to the situation of the parties, attendance at an information session on the mediation process will be required prior to the hearing of any application involving the interests of the parents and of one or more of their children that is contested on a matter relating to child custody, support due to one parent or to the children, the family patrimony or other patrimonial rights arising from the marriage.

The bill introduces in that respect two types of information session to be attended by the parties: sessions held in the presence only of the parties and a mediator, and group sessions held in the presence of several couples or parties and of two mediators of different professions. It sets out the content of information sessions and prescribes rules to ensure the free and enlightened consent of the parties in deciding whether or not to proceed with mediation after the information session or to proceed with mediation with the mediator of their choice. The bill contains rules governing the conduct of mediation sessions, and sets out the rights and obligations of each participant.

The bill also sets out the Government's power to make regulations on mediation, in particular to allow for the establishment of standards to apply to certified mediators in the exercise of their functions, and replaces the current tariff established by regulation by a new tariff to reflect measures introduced by the bill.

In addition, the bill provides that applications relating to child custody or to support obligations which are introduced by way of a motion will be dealt with directly by the special clerk, without a hearing, provided that the parties have reached agreement on the matters involved.

Lastly, the bill re-establishes the jurisdiction of the clerk of the

municipal court in civil matters; it allows a bailiff, subject to certain conditions, to effect service, without first having to obtain permission at the office of the court, by modes other than those usually required; and it changes the manner in which the clerk of small claims must evidence a service by mail.

Bill 65

AN ACT TO INSTITUTE, UNDER THE CODE OF CIVIL PROCEDURE, PRE-HEARING MEDIATION IN FAMILY LAW CASES AND TO AMEND OTHER PROVISIONS OF THE CODE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Article 4 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting the words “, or any other person appointed to act in that capacity at the court to which the provision is applicable” after the word “law” in the second line of subparagraph *d* of the first paragraph.

2. Article 44.1 of the said Code is amended by inserting, after the first paragraph, the following paragraph :

“The special clerk may, where an application relating to child custody or to obligations of support is introduced by way of a motion, homologate any agreement effecting a complete settlement of these matters.”

3. Article 45 of the said Code is amended by adding the following paragraph :

“In the case of an application referred to in the second paragraph of article 44.1, the special clerk may refer the application to the judge or the court if he considers that the agreement between the parties does not provide sufficient protection for the interests of the children or that a party’s consent was obtained under duress. He may, to evaluate the agreement or the consent of the parties, summon and hear the parties, even separately, in the presence of their attorneys, if any.”

4. Article 138 of the said Code is amended by adding, at the end of the second paragraph, the following: “However, where the attempt to effect service was made by a bailiff or a sheriff and was recorded in his certificate, the bailiff or sheriff may, without authorization, serve the proceeding by leaving on the premises a copy of the written proceeding intended for the addressee.”

5. Article 813.8 of the said Code is amended by replacing the word “five” in the third line of the second paragraph by the word “ten”.

6. Article 814.1 of the said Code is amended by adding the following paragraph :

“An exception to this rule is made in the case of applications within the jurisdiction of the special clerk pursuant to the second paragraph of article 44.1 ; such applications are presented directly to the clerk, and do not require a hearing.”

7. The said Code is amended by inserting, after article 814.2, the following subsection :

“§5. — *Pre-hearing mediation*

“814.3. Except applications under article 814.9, no application that involves the interests of the parties and the interests of their children may be heard by the court if there is a dispute between the parties regarding child custody, support due to a party or to the children, the family patrimony or other patrimonial rights arising from the marriage, unless the parties have attended an information session on the mediation process and a copy of the mediator’s report has been filed.

“814.4. The information session on the mediation process may be held in the sole presence of both parties and a mediator.

A group information session may also be held. In such a case, the session is held in the presence of at least three persons registered with the Family Mediation Service of the Superior Court and of two mediators, one of whom must be from the legal profession and the other, from another profession.

“814.5. The parties select jointly the type of information session they wish to attend. In case of disagreement as to the type of information session or, where applicable, as to the choice of a mediator, the parties must, together or separately, attend a group session.

“814.6. The information session bears on the nature and objectives of the mediation, the mediation process and the roles to be played by the parties and the mediator.

At the conclusion of the information session, the mediator informs the parties of their right to enter into mediation or not, and of their right to enter into mediation with that mediator or with another mediator of their choice. If the parties fail to agree to enter into mediation or express their wish to enter into mediation with another mediator, the mediator files his report with the Family Mediation Service of the Superior Court and sends a copy to the parties.

In the case of a group session, the mediators inform the parties of their right to enter into mediation or not and of their right to enter into mediation with the mediator of their choice. They file a joint report with the Service for each party present at the session and send each party a copy.

“814.7. The mediation sessions take place in the presence of both parties and of a mediator or, if the parties agree, two mediators; other persons may be present at the mediation sessions, provided the parties agree, the mediator considers the presence of those persons necessary and they are neither experts nor advisers.

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 other person, according to the type of advice sought.

“814.8. Either party may, at any time during mediation, terminate it without having to give reasons. The mediator must terminate mediation if he considers that to pursue it would be ill-advised.

In such cases, the mediator files his report with the Family Mediation Service of the Superior Court and sends a copy to the parties.

“814.9. The court may, on a motion, make, subject to the conditions it determines, any appropriate order to safeguard the rights of the parties or children during the period of mediation or during any other period it considers appropriate.

“814.10. A party that has a valid reason not to attend the information session on the mediation process may state that fact to the mediator of his choice; the reason may relate, in particular, to the inequality of the power relationship, to the disability or the physical or psychological condition of the party or to the great distance between the party’s residence and that of the other party.

In such a case, the mediator draws up a report containing an express statement of the party concerned that the party cannot attend the information session for a valid reason, which need not be disclosed; the mediator then files his report with the Family Mediation Service of the Superior Court and sends a copy to the party having made the statement and, if the application has been filed at the office of the court, to the other party.

“814.11. Where a copy of a report drawn up by a mediator in the circumstances referred to in article 814.10 has been filed, the court may proceed without the parties having attended an information session.

“814.12. A party who does not attend the information session on the mediation process may, unless he files a copy of a report containing a statement that he cannot do so, be condemned to all the costs relating to the application.

“814.13. The mediator’s report remains valid, regardless of the circumstances in which it is drawn up, until the judgment on the principal application becomes *res judicata*; the report also remains valid in respect of any application for review of the judgment.

“814.14. The Family Mediation Service of the Superior Court pays the mediator’s fees, up to the prescribed number of sessions, provided the fees are in keeping with the tariff established under article 827.3; otherwise, the mediator’s fees are borne and paid in full by the parties.”

8. Article 815.2.1 of the said Code is amended by replacing the third paragraph by the following paragraph :

“Except in cases determined by regulation, the mediator’s fees are borne by the parties, each bearing the proportion determined by the court. However, in every case where the application involves the interests of the parties and the interests of their children, the Family Mediation Service pays the mediator’s fees, up to the prescribed number of sessions, provided the fees are in keeping with the tariff established under article 827.3.”

9. Article 815.2.2 of the said Code is amended by striking out the last sentence.

10. Article 815.2.3 of the said Code is repealed.

11. The said Code is amended by adding, after article 815.4, the following article :

“815.5. Where the court adjudicates on an agreement submitted to it as part of a proceeding governed by this Title, it ascertains, among other things, whether the agreement provides sufficient protection for the interests of the children, if any, and ensures that neither party’s consent was obtained under duress.

The court may, for such purposes, summon and hear the parties, even separately, in the presence of their attorneys, if any.”

12. Article 825.10 of the said Code, enacted by section 2 of chapter 68 of the statutes of 1996, is amended by replacing the words “one clear day” in the second line by the words “five days”.

13. Article 827.2 of the said Code is amended by inserting the words “or information session on the mediation process” after the word “mediation” in the first line.

14. Article 827.3 of the said Code is amended

(1) by inserting the words “; the Government may also, by regulation, determine the rules and obligations with which a certified mediator must comply in the exercise of his functions and the penalties applicable for failure to comply with such rules and obligations” after the word “comply” in the fourth line of the first paragraph ;

(2) by replacing the second paragraph by the following paragraph:

“The Government may also, by regulation, establish the tariff of fees payable by the Family Mediation Service of the Superior Court to a certified mediator for services provided pursuant to articles 814.3 to 814.14 and article 815.2.1, and limit the fees so payable by the Service to a maximum number of sessions conducted by the mediator. As well, the Government may establish the tariff of fees payable by the parties to a mediator designated by the Service, and the fees payable by parties requiring the services of more than one mediator or for sessions in excess of the number of sessions for which the mediator’s fees are paid by the Service.”

15. The said Code is amended by inserting, after article 827.3, the following article:

“827.3.1. The mediator’s report records the presence of the parties and the matters on which agreement was reached. In the case of a report referred to in the second paragraph of article 814.6 or in article 814.10, the report records the failure of the parties to reach an agreement to enter into mediation or their wish to enter into mediation with another mediator, or the statement of either party that he cannot attend the information session on the mediation process.

The mediator’s report may contain no other information. It is dated and signed by the mediator.”

16. Article 827.4 of the said Code is amended by replacing the word “article” in the second line by the words “articles 814.3 to 814.14 and”.

17. Article 827.5 of the said Code is amended

(1) by replacing the first sentence of the first paragraph by the following sentence: “No application relating to an obligation of support may be heard unless it is accompanied by a sworn statement by the plaintiff containing the information prescribed by regulation.”;

(2) by adding, at the end of the first paragraph, the following: “Likewise, no contestation of the application may be heard unless a sworn statement by the defendant has been filed at the office of the court. The court may, however, relieve the defendant from his default on the conditions it determines.”

18. Article 961 of the said Code is amended by adding, at the end of the first paragraph, the following sentence: “The acknowledgment of receipt or the notice of delivery, as the case may be, serves as an attestation of service.”

19. The provisions of articles 813.8, 814.3 to 814.14, 825.10 and 827.5 of the Code of Civil Procedure, enacted by sections 5, 7, 12 and 17, do not apply to proceedings in progress.

20. The fees payable to a mediator for services provided pursuant to articles 814.3 to 814.14 and the third paragraph of article 815.2.1 of the Code of Civil Procedure, enacted by sections 7 and 8, shall be subject to the following tariff.

The fees payable by the Family Mediation Service of the Superior Court are

(1) \$95 for an information session on the mediation process other than a group session;

(2) \$125 per mediator for a group information session on the mediation process;

(3) \$95 for each mediation session, whether one or two mediators are present.

However, the Service shall only pay such fees up to a maximum number of six sessions, whether or not an information session is held or a greater number of sessions is required. Where the mediator's services are provided in connection with an application for review of a judgment rendered between the parties on the matters at issue, the maximum number of sessions is three.

Where the mediator's report records the absence of the parties or of one of the parties from an information session on the mediation process other than a group session, the statement of either party that he cannot attend an information session or, in the cases referred to in article 815.2.1 of the Code of Civil Procedure, the fact that no mediation session has been held, the fees payable by the Service to the mediator are \$50.

The fees payable by the parties are

(1) \$95 for each mediation session conducted by a mediator designated by the Family Mediation Service of the Superior Court pursuant to article 815.2.1 of the Code of Civil Procedure; where the mediator's report records that no mediation session has been held, the fees are \$50;

(2) \$95 for each mediation session in excess of the maximum number of sessions for which the fees are paid by the Family Mediation Service of the Superior Court.

Where the parties require the services of more than one mediator at a mediation session, the fees payable by the parties per additional mediator may not exceed \$95 for each session for which the mediator's services are required.

21. For the purposes of section 20, the information session on the mediation process shall last approximately 75 minutes or, in the case of a group session, approximately 90 minutes.

The total time of mediation must correspond to an average duration of 75 minutes per mediation session.

22. The Family Mediation Service of the Superior Court shall pay the mediator's fees upon the filing, by the mediator, of his report and, where applicable, of a document, signed by his clients, stating the number and the nature of the sessions held.

23. The provisions of sections 20 to 22 replace, from 1 September 1997, sections 10 to 12 of the Regulation respecting family mediation enacted by Order in Council 1686-93 (1993, G.O. 2, 6734), as if they had been made under article 827.3 of the Code of Civil Procedure. They remain in force until the Government, under article 827.3 of the Code of Civil Procedure, amends the said sections 10 to 12.

24. Section 1 has effect from 1 January 1994.

25. This Act comes into force on 1 September 1997.

In addition, sections 1 to 3 of the Act to amend the Code of Civil Procedure regarding family mediation (1993, chapter 1) and article 827.4 of the Code of Civil Procedure, enacted by section 4 of that Act, come into force on 1 September 1997.