



# Mediation Framework

Direction des affaires juridiques (Legal Affairs)

First published : september 2008  
Update : october 2013

# MEDIATION FRAMEWORK

## GENERAL PROVISIONS

1. Section 138.1 of the *Act respecting access to documents held by public bodies and the Protection of personal information* (RSQ, c. A-2.1) and section 48 of the *Act respecting the Protection of personal information in the private sector* (RSQ, c. P-39.1) provide that the Commission d'accès à l'information (hereinafter the Commission) may, on receiving an application, direct a person it designates to attempt to bring the parties to an agreement, if it considers doing so to be useful and provided the circumstances of the case allow it.
2. The person designated by the Commission acts as mediator to the parties consenting to mediation. The mediator remains available to the parties through all steps in their case before the Commission.
3. Mediation is a free and voluntary process. It enables parties to find a solution adapted to their needs.
4. The mediation process is confidential and separate from the decision making process. Accordingly, all things said or written during the course of mediation may not be disclosed to any person, except the parties, and may not be introduced as evidence in a tribunal, including the Commission, unless the parties consent. Likewise, documents received in the context of mediation will not be put in the Commission's file, unless requested by the party producing the documents.
5. This mediation framework aims to do the following:
  - promote the Commission's mediation process, encourage its use and emphasize its importance;
  - promote and clarify the role of the mediator designated by the Commission;
  - communicate the Commission's expectations in regard to parties that use the mediation service;
  - ensure the quality of the Commission's mediation services.

## MEDIATOR'S ROLE

6. The mediator:
  - is familiar with the acts, regulations, and case-law under the Commission's jurisdiction;
  - is trained in mediation;
  - exercises the role of mediator in compliance with all applicable laws and taking into account the facts of each case;
  - does not represent any party. The mediator acts impartially and objectively;

- helps parties reach a mutually satisfactory settlement, but does not have the power to impose a settlement. In this context, the mediator may make recommendations likely to help the parties reach an agreement, but these recommendations may under no circumstances engage the parties, the mediator or the Commission.

## **DUTY TO INFORM**

7. The mediator shall inform the parties or their representatives:
  - of the objectives, conditions and limitations of the mediation process;
  - of the free and voluntary nature of mediation and their right to discontinue the process at any time;
  - of the consequences of settlement as regards to the rights and obligations arising from laws under the Commission's jurisdiction.
8. It is up to the parties to decide whether or not to accept a proposed settlement. As applicable, the mediator may invite the parties to make the necessary consultations before giving their consent.

## **STEPS IN THE MEDIATION PROCESS**

9. The mediator, after consulting the parties, decides when and how mediation shall proceed.
10. Generally, there are three steps in the mediation process:
  - confidential discussions between the mediator and each party;
  - an exchange of information enabling each party to express its own positions and become familiar with and understand those of the other party;
  - assessment of the options, negotiation and the search for mutually satisfactory solutions.
11. The mediator is permitted to speak separately with each of the parties. However, information provided during these discussions may not be disclosed to the other party without the authorization of the party concerned.
12. At any time, a party may submit to the mediator, for the mediator's exclusive consideration, information and documents that the party considers confidential.
13. Unless the parties otherwise expressly agree, a suggestion made by the mediator or by either party in regard to an eventual settlement of the dispute may not be introduced as evidence in a court proceeding.
14. The mediator cannot be required to disclose information given to or acquired by the mediator while acting in that capacity. Moreover, the mediator cannot be required to produce a document prepared or obtained in a context of mediation before a judicial tribunal or before a person or an administrative organization exercising adjudicative functions.

## **ROLE OF THE PARTIES AND THE REPRESENTATIVES**

15. To enable the Commission to achieve its goal of providing timely processing of applications, collaboration by the parties and representatives is essential.
16. Parties and representatives participating in mediation shall display a dignified and respectful attitude.
17. Parties and their representatives shall sign all required documents as soon as possible upon transmission by the mediator.

## **SUSPENSION OR TERMINATION OF MEDIATION**

18. The mediator may, after having notified the parties or their representatives, suspend or terminate mediation, in particular when:
  - either party so requests;
  - continuing mediation could be prejudicial to a party;
  - the mediator considers a settlement in the mediation case to be highly unlikely;
  - any other reason.

## **CASE SETTLEMENT**

19. The receipt by the mediator of a declaration of settlement or any other written or verbal notice from the applicant or the applicant's representative indicating the wish to withdraw the application terminates the process, whereupon the Commission's file shall be closed. However, when a notice from an applicant or an applicant's representative is given verbally, the mediator shall transmit written confirmation of his or her intention to close the file. This notification may be accompanied by an application withdrawal form, which the applicant or the applicant's representative is requested to sign and return to the mediator within the specified time.

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