

NATIONAL ASSEMBLY

SECOND SESSION

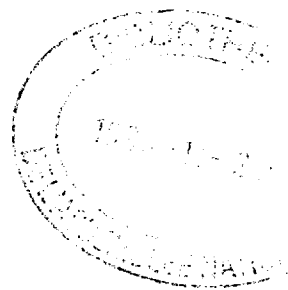
THIRTY-FIFTH LEGISLATURE

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**

Introduction

**Introduced by
Mr Paul Bégin
Minister of Justice**



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EXPLANATORY NOTES

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

The bill makes pre-hearing mediation mandatory, except where the parties are in certain particular circumstances, whenever an application involving the interests of the parents and of one or more of their children 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 rules to encourage the making of arrangements between the parties for the initiation of mediation, to allow the Family Mediation Service of the Superior Court to designate a mediator in difficult cases and to protect the rights of parents and their children during the mediation period.

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 the holding of a hearing, provided that the parties have reached agreement on the matters involved.

Lastly, the bill re-establishes the jurisdiction of the municipal clerk 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, amended by section 1 of chapter 28 of the statutes of 1994, is again 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 section 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.”

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 has been 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 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.”

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

“§5. — *Pre-hearing mediation*

“814.3. No application that involves, in addition to the interests of the parties, the interests of their children is admissible 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 dispute has been submitted to a mediator and the application is accompanied by a copy of the mediation report.

The court may, however, if it is warranted by valid cause such as family violence, the disability of a party or the residence of a party outside Québec, proceed even though there has been no pre-hearing mediation.

“814.4. Subject to his right to be exempted from the requirement of pre-trial mediation for valid cause, a party who intends to present an application subject to the requirement of pre-hearing mediation must, failing agreement with the other party to proceed therewith, give written notice to the other party of his intention to present the application, stating that such mediation is mandatory, and proposing that they agree, within 10 days, on arrangements for the initiation of mediation. The notice may be served by registered or certified mail.

Where no arrangements are agreed upon, the party who intends to present the application must file a copy of the notice at the office of the court with proof of service; the Family Mediation Service of the Superior Court then designates a mediator charged with bringing the parties to agree, within 30 days after the filing, to proceed with mediation.

Upon the termination of mediation or, failing agreement to proceed with mediation, on or before the expiry of the 30-day period, the mediator files his report with the Family Mediation Service and sends a copy to the parties.

“814.5. The court may, on a motion, make any appropriate order to safeguard the rights of the parties or children during the period of mediation.

“814.6. A party to a contested application who, without valid cause, does not take part in pre-hearing mediation may be ordered to pay all costs relating to the application.

“814.7. The mediator’s fees are borne by the Family Mediation Service of the Superior Court, subject to the fees conforming to the tariff established under article 827.3 in cases where the mediator is chosen by the parties.”

7. Article 815.2.1 of the said Code, enacted by section 2 of chapter 1 of the statutes of 1993, 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, the

mediator's fees are borne by the Family Mediation Service in every case where the application involves, in addition to the interests of the parties, the interests of their children, subject to the fees conforming to the tariff established under article 827.3 in cases where the mediator is chosen by the parties."

8. Article 815.2.2 of the said Code, enacted by section 2 of chapter 1 of the statutes of 1993, is amended by striking out the last sentence.

9. Article 815.2.3 of the said Code is repealed.

10. 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."

11. Article 827.3 of the said Code is amended by replacing the words "for the carrying out of a mediation mandate given to him by the Service" in the third line of the second paragraph by the words "who conducts mediation under article 814.3 or 815.2.1, and of fees payable by the parties to a certified mediator designated by the Service to conduct such mediation".

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

"827.3.1. The report of a mediator records the presence of the parties and the matters on which agreement was reached; it contains no other information."

13. Article 827.4 of the said Code, enacted by section 4 of chapter 1 of the statutes of 1993, is amended by replacing the word "article" in the second line by the words "articles 814.3 and".

14. Article 827.5 of the said Code, enacted by section 89 of chapter 18 of the statutes of 1995, is amended

(1) by replacing the first sentence of the first paragraph by the following sentence: "No application relating to an obligation of support is admissible 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 is admissible 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."

15. 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."

16. The provisions of articles 814.3 to 814.7 and article 827.5 of the Code of Civil Procedure, enacted by sections 6 and 14, do not apply to proceedings in progress.

17. Section 1 has effect from 1 January 1994.

18. The provisions of this Act come into force on the date to be fixed by the Government, except sections 1, 4, 14 and 15, section 16 insofar as it concerns article 827.5 of the Code of Civil Procedure and section 17, which come into force on (*insert here the date occurring 30 days after the date of assent to this Act*).