

NATIONAL ASSEMBLY
Thirty-fourth Legislature, second session

1993, chapter 1
**AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE
REGARDING FAMILY MEDIATION**

Bill 14

Introduced by Mr Gil Rémillard, Minister of Justice

Introduced 13 May 1992

Passage in principle 5 June 1992

Passage 9 March 1993

Assented to 10 March 1993

Coming into force: on the date or dates fixed by the Government with the exception of section 4, to the extent that it enacts the second sentence of article 827.2 and article 827.3 of the Code of Civil Procedure, which will come into force on 10 March 1993

Act amended:

Code of Civil Procedure (R.S.Q., chapter C-25)



CHAPTER 1

An Act to amend the Code of Civil Procedure regarding family mediation

[Assented to 10 March 1993]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. C-25,
a. 815.2,
am.

1. Article 815.2 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the first paragraph by the following paragraph:

“815.2 At any time before judgment, the court, with the consent of the parties, may adjourn the hearing of the application for the period it determines, with a view to favouring either the reconciliation of the parties or their conciliation, in particular, through mediation.”

c. C-25,
aa. 815.2.1-
815.2.3,
added

2. The said Code is amended by inserting, after article 815.2, the following articles:

“815.2.1 At any time during the hearing of a contested application, the court may order the adjournment of the hearing and the referral of the parties to the Family Mediation Service of the Superior Court or, at their request, to the mediator of their choice, for the settlement of one or more matters relating to the custody of the children, the support due to the spouse or children, the family patrimony or other patrimonial rights resulting from the marriage. The Service shall designate a mediator and fix the date of the first meeting, which must take place no later than on the twentieth day after the order.

When the court makes an order, it shall take into account the particular circumstances of each case, and in particular the fact that the parties have already met a certified mediator, the balance of power in place, the interests of the parties, and, if any, of their children.

Parties who are referred by the court to a mediator of their choice are bound to pay the mediator's fee; the parties shall contribute in a proportion which the court shall determine.

The hearing is adjourned for the period determined by the court, not exceeding ninety days. At the expiry of that period, the court shall continue the hearing or fix a later date, unless the parties expressly agree to an extension for a period determined by the court. The parties must begin the mediation process within twenty days after the referral order. Where the parties fail to do so, or where mediation ends before either the end of such a period or the end of the period of adjournment, one of the parties may apply for the continuance of the hearing. The judge having ordered the referral of the parties to mediation shall have the file brought before him, unless the chief justice decides otherwise for administrative reasons.

The court shall make all appropriate orders to safeguard the rights of the parties and children for such time and on such conditions as it determines.

The judge presiding over a pre-trial conference may also order an adjournment and refer the parties to mediation in accordance with this article.

"815.2.2 On or before the expiry of the period determined under article 815.2.1 or the expiry of the period of twenty days if the parties have not undertaken the mediation process, the mediator shall file the report concerning the mediation at the office of the court and transmit it to the parties and their attorneys. The report shall record the attendance of the parties and the matters on which agreement was reached; it shall contain no other information.

"815.2.3 Where the court adjudicates on the agreement, it shall establish, among other things, whether the agreement provides sufficient protection for the interests of the children and ensure that the parties were consenting and that none of them was subject to undue pressure.

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

c. C-25,
a. 815.3,
replaced

3. Article 815.3 of the said Code is replaced by the following article:

"815.3 Nothing said or written during a conference of reconciliation or conciliation, including a conference of mediation, is admissible as evidence in a court proceeding unless it is a particular mentioned in article 815.2 and the parties and the reconciliator,

conciliator or mediator, as the case may be, consent to its being admitted as evidence.”

c. C-25,
aa. 827.2-
827.4,
added

4. The said Code is amended by inserting, after article 827.1, the following articles:

“827.2 Any mediation conducted prior to or during proceedings in family matters shall be conducted by a certified mediator. The Government shall designate persons, bodies or associations having authority to certify a mediator.

“827.3 The Government, by regulation, may establish the conditions a mediator must satisfy to be certified and may determine the rules and obligations with which persons, bodies or associations authorized to certify a mediator must comply.

The Government may also establish, by regulation, a tariff of fees payable by the Family Mediation Service of the Superior Court to a certified mediator for the carrying out of a mediation mandate given to him by the Service.

“827.4 If expedient, the Minister of Justice shall determine, by order, for what purposes, other than those set out in article 815.2.1, the Family Mediation Service of the Superior Court may be used subject to the conditions he determines.”

Consolidat-
ed revenue
fund

5. The sums required for the administration of this Act for the fiscal year 1992-93 are taken out of the consolidated revenue fund, as is determined by the Government.

Coming into
force

6. The provisions of this Act will come into force on the date or dates fixed by the Government with the exception of section 4, to the extent that it enacts the second sentence of article 827.2 and article 827.3 of the Code of Civil Procedure, which will come into force on 10 March 1993.