

YOUR
CONFLICT

YOUR
SOLUTIONS

WITH ANOTHER PERSON

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FOREWORD

LEGAL VALIDITY

The law is constantly evolving. The legal information in this guide is valid as at June 2020.

LEGAL OPINION

The information in this guide applies only in Quebec and should not be regarded as a legal opinion. For the specific rules that apply to your situation, you should consult a lawyer or a notary.

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In this guide, use of the masculine gender includes both men and women and is used without discrimination solely to simplify the text.

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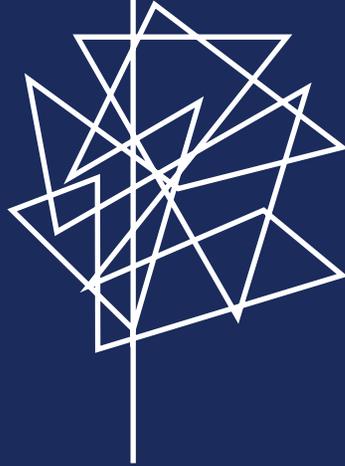
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INTRODUCTION



Do you want to resolve a conflict but want to avoid using lawyers and going to court? Are you not sure of your options or where to start? If so, this guide is for you! It will help you determine the different aspects of the conflict and choose the best way to achieve an effective, fair and lasting solution.

This guide explores the various benefits of trying to resolve a conflict without going to court. Over 95% of conflicts are resolved without a judge's decision, so why not yours?

You'll find out what steps you could take to resolve your conflict, either on your own or with the help of professionals. The guide also explains collaborative negotiation and mediation, two effective ways to find solutions to your conflict.

Throughout the guide, concrete examples illustrate the various concepts presented. At the end of the guide, you'll find a list of useful resources, references and practical tools for going further in your efforts to resolve your conflict.

1

DEALING WITH CONFLICT

No doubt, you've had a disagreement with someone such as a neighbour, a co-worker, a roommate or a landlord. Because we all have our own way of viewing things, sometimes it's difficult to see the other person's point of view. The situation can quickly turn sour and escalate into conflict.

In this guide, the word **conflict** is used as a blanket term for all kinds of conflicts, including squabbles, disagreements, misunderstandings, lawsuits, arguments, disputes, problems, etc.

1 A CONFLICT IS MORE THAN JUST A LEGAL ISSUE

It's perfectly normal to have conflicts in our interactions with people, and we'll continue to have them throughout our lives. This is common — it's not something that happens only once in a lifetime.

Rarely does a conflict only involve a legal question. It's when things are at a stalemate between the parties that the legal aspect of the conflict surfaces. Then the parties react by resorting to lawyers and the courts because there are laws and rules that cover the legal issues involved.

In a «lawsuit culture», parties in conflict send each other letters of demand — the first formal step on the way to the courthouse.

However, if only the legal aspect of the conflict gets resolved in the end, the parties haven't truly solved their problem. They shouldn't underestimate the side effects of a conflict that can't get entirely resolved through a strictly legal approach.

2 CONSIDER ALL ASPECTS OF YOUR CONFLICT IN ORDER TO CHOOSE THE BEST WAY TO RESOLVE IT

There are several aspects to any conflict. You should consider all of them before beginning a process to resolve it. These aspects affect the conflict itself and how the people involved experience it.

Emotional aspect

Almost invariably, people in conflict are in a heightened emotional state and have feelings that aren't always easy to identify such as confusion, anger, disappointment, anxiety, denial, grief, frustration, sadness, fear, surprise, shame or guilt.

Relational aspect

The nature of their interpersonal relationship is also a very important factor and becomes especially significant if the parties have to continue to communicate with each other. This is the case, for example, with separated parents who must make decisions regarding their children's well-being and education. Relationships are also a very important factor in conflicts involving family members, friends, co-workers and neighbours.

Financial aspect

In some situations, a conflict also has a financial aspect if money is at stake such as claiming a sum of money or denying that any money is owed. You may also need to factor in other costs to resolve the conflict, such as lawyer or notary fees, fees for an expert opinion, or fees for psychological or social assistance if the conflict significantly affects your life.

3 EXAMPLES OF CONFLICTS IN EVERYDAY LIFE

Conflicts can crop up in a wide variety of contexts. But they are especially common in relationships with family members, neighbours and co-workers.

Throughout this guide, we will use the following three conflict situations to provide concrete illustrations of some things you could do that might help resolve your conflict.

FAMILY CONFLICT



Two separated parents have to choose a school for their child. One parent wants the child to go to the local school and the other would prefer a school that combines sports and study. This creates conflict between them because neither parent will give in to the other.

CONFLICT WITH NEIGHBOURS



Two neighbors, a man and a woman, have been in conflict for almost two years. Every Saturday, the woman mows her lawn early in the morning and every afternoon she listens to music in her garden through powerful speakers. The man works nights. He is unable to enjoy a quiet Saturday morning or take nap in his garden in the afternoon. He's upset with his neighbour, but hasn't discussed the situation with her yet.

CONFLICT AT WORK



Two co-workers, both on the same project team with a major client, have very different ways of working. This has affected the atmosphere at work and everyone feels the tension in the air. Management is worried that the situation is creating a negative company image in the eyes of the client.

2

**CHOOSING THE BEST WAY TO
RESOLVE A CONFLICT**



There are several ways to resolve a conflict. Just as access to the health care system is not limited to hospitals, access to justice is not limited to the courts.

1 GOING TO COURT ISN'T YOUR ONLY OPTION

If you're in a conflict with someone, before you take the lawsuit route, you should consider other ways of resolving the situation.

You should choose the best way for you and the other person to find a fair solution that satisfies everyone. To do this effectively, you'll have to work with each other in good faith.

In certain cases, a lawsuit is actually the appropriate way to settle a conflict. In fact, often the first reflex is to turn to the courts. But in many other situations, you have a range of options for creating a personalized solution that works for everyone.

It is especially worth noting that a solution achieved out of court is as valid as a judge's decision. An out-of-court agreement can even be submitted to a judge for formal approval. This means that the parties could be forced to respect the agreement if they fail to do so voluntarily.

Many lawyers and notaries are trained to help you and the other person to find common ground. If you retain their services, they are obliged to tell you about the other ways conflict can be resolved. Starting on page 32, we explain how they can help you do that without going before a judge.

2 SOME BENEFITS OF RESOLVING YOUR CONFLICT WITHOUT GOING TO COURT

There are several advantages to resolving your conflict without going to court. Often, not only does the solution resolve the conflict, but it will also have certain benefits, such as:

- providing you with an original solution adapted to your situation;
- restoring your relationship with the other person;
- a shorter and less costly process;
- confidentiality; and
- reduced stress.

An original solution adapted to your situation

The parties involved in a conflict can work out a personalized and more comprehensive solution.

Conflicts are rarely limited to legal issues only. They usually have emotional or financial aspects as well. An agreement negotiated by the people involved in the conflict could resolve all these other aspects, not just the legal issues that a judge would decide. This is called a “win-win” solution. But what does that mean exactly, in concrete terms?

LET'S TAKE THE EXAMPLE OF THE NEIGHBOURS IN CONFLICT:

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The woman mows her lawn early on Saturday mornings because that's the day she goes to take care of her sick mother, and she has to be there by 9:00 a.m. She finds the afternoons too hot to do any mowing. Listening to music to take her mind off things.

The man has a 15-year old son and two-year-old twins. In the afternoon, the twins need a nap, and he takes that opportunity to rest because he works mainly nights.

If both neighbours were willing to talk to each other openly about their conflict, their discussions could result in the following win-win solution:

The man's 15-year old son would mow the woman's lawn when it suits him (and his father!). The father would give his son pocket money for doing the mowing, as he already does for other chores. The woman agrees that she won't listen to music outdoors between

1:00 and 3:00 p.m. so that her neighbour and the twins can take a nap. She'll split the pocket money the father pays his son for mowing her lawn.

— **The woman wins** — because she gets her lawn mowed cheaply.

— **The man wins** — because he can sleep in on Saturdays and have a quiet nap in the afternoon.

A judge certainly wouldn't have decided the case that way! So, without going to court, they will have restored good neighbourly relations.

Restoring your relationship with the other person

If your conflict involves someone with whom you want to, or have to, maintain a relationship, it would be wise to build bridges by working together to find a solution. A solution reached without going to court can help restore your relationship with the other person. Once you put confrontation aside, you'll be in resolution and cooperation mode.

All aspects of the conflict, including its relational side, can be considered in seeking a satisfactory out-of-court solution. The people involved will decide for themselves what solution is best for them; a judge won't impose it on them.

In the previous example, the neighbours worked out their own solution. It let them restore their relationship. While they may not necessarily become best friends, they'll now be able to say hello to each other instead of looking the other way. And if some other conflict occurs in the future, it will be that much easier to resolve.



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Let's consider the two co-workers in conflict. Because they'll be working together on the same project for several months, a less strained relationship is in both their interest. Therefore it's to their advantage to restore their relationship, as much for themselves as for their team and their client.

A shorter and cheaper process – not to mention less stress!

There are several ways to resolve your conflict without formalities, legal proceedings or paperwork. This means you could resolve your conflict more quickly, more cheaply and with a lot less stress. Unresolved conflict can involve much time, expense and energy.

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In the example of the separated parents, they need to choose a school for their son very soon because registration is only weeks away. They could always refer their conflict to a lawyer and ultimately have a judge decide for them. But the parents would each have to pay their own lawyers separately for preparing legal proceedings and representing them in court.

However, if they decide to resolve the issue with a mediator, for example, their costs would

be much lower. They would split the mediator's fees and there would be no need for legal proceedings. They could quickly find a solution that met their child's needs and satisfied their individual preferences. They would all know where they stand, including their son who is anxious to know which school he'll be going to in the coming school year.

For example, the parents could agree that their son will attend the local school, play on the school basketball team and continue taking swimming lessons on Sundays. He won't have far to travel and could still play lots of sports. That way, the interests of both parents and their son would be respected.

Confidentiality

Unlike court hearings and judgments, which are generally public, certain conflict resolutions processes can be kept confidential. Confidentiality is a definite advantage, especially if you don't want word of the conflict or how it was resolved to get around.

In the example of the two co-workers with different ways of working, their employer insists that all discussions surrounding resolution of the conflict be kept confidential because he is concerned that the company's image could be tarnished in the eyes of the client. With mediation, confidentiality is possible.

Except in certain rather rare circumstances, all discussions and documents produced and exchanged in mediation are kept confidential. Only the people involved can have access to them. In fact, the mediation participants sign a confidentiality agreement at the first meeting.

Find out more about mediation on page 32.



see p. 10

3 SOME FURTHER ARGUMENTS IF YOU'RE STILL NOT CONVINCED THAT YOU COULD RESOLVE A CONFLICT WITHOUT GOING TO COURT.

Are you uncomfortable with the idea of resolving your conflict in some way other than by going to court? Do you think these other ways aren't for you? Do you think they're not effective or valid, and that if you suggested trying them you'd be sending a message to the other person that you're weak?

There are several common misconceptions or preconceived ideas about alternative conflict

resolution methods. However, they do not reflect reality. The following table sets out and corrects a number of mistaken ideas concerning:

- the process;
- the people involved in the conflict; and
- the mediator's role.

Misconceptions or preconceived ideas surrounding the process

MISCONCEPTIONS OR PRECONCEIVED IDEAS	FACT
 <p data-bbox="268 1382 663 1450">« It won't do any good. »</p>	<p data-bbox="879 1130 1776 1255">Often a process that doesn't involve going to court will result in the parties reaching agreement. Of course, to achieve that result, both parties must take part in the process with an open mind and in good faith.</p> <p data-bbox="879 1287 1787 1382">Although the process may not fully resolve the conflict, some aspects of it will certainly be resolved. This would reduce costs if a lawsuit becomes necessary in the future.</p> <p data-bbox="879 1414 1692 1476">The process also makes it possible to better understand the positions and arguments of each person involved.</p>



« It's not very credible as a process. »

It's as legitimate and reliable a conflict resolution method as going to court.

The current trend in the legal profession is towards a «settlement culture» rather than a «lawsuit culture». The profession actively promotes alternative methods of resolving conflicts.

In addition to developing a departmental strategy and strategic planning, the Ministère de la Justice even changed the law in 2016 in order to develop and promote different methods for resolving conflicts.



« It's not as effective as a court judgment. »

Resolving a conflict through an alternative process, without going to court, is as effective as a judgment, and sometimes even more effective.

An out-of-court solution can resolve the **entire** conflict, not just its legal aspect. Among other things, it can preserve the relationship between the parties.

Also, a judge can formally approve the agreement, which gives it the same force and effect as a judgment. So if one of the parties doesn't respect his part of the bargain, the other party can force him to do so.



« It's a waste of time, money and energy. »

In fact, the opposite is true.

A solution reached out of court can resolve a conflict much quicker than by going to court. Normally, it takes months or years from the beginning of a conflict until a court decision is handed down.

Resolving your conflict by means other than a lawsuit can also reduce costs. Often no formalities are required. This means that you can expect fewer costs, such as lawyers' fees and experts' fees.

And lastly, by resolving the conflict more quickly and without formality, a weight will be lifted from your shoulders. You won't have to cope with the stress of testifying in front of the other person and you'll be able to channel your energy into other things.

Misconceptions or preconceived ideas about the people involved

MISCONCEPTIONS OR PRECONCEIVED IDEAS	FACT
 <p data-bbox="170 500 768 607">« Making the first move is an admission of weakness or proof that we're wrong. »</p>	<p data-bbox="884 329 1766 394">Taking the first step is actually a sign of good faith. It means that you're prepared to listen to the other person.</p> <p data-bbox="884 427 1791 492">The message you're really sending is: "Let's try to work together to resolve our problem".</p> <p data-bbox="884 524 1780 589">Also, the law says that you must consider other ways of resolving your conflict before taking the court route.</p>
 <p data-bbox="201 868 737 976">« I'm sure the other person will refuse to resolve this without going to court. »</p>	<p data-bbox="884 727 1791 824">A Québec study carried out in 2016 for the Ministère de la Justice found that most people having conflict prefer to resolve it directly with the other person involved.</p> <p data-bbox="884 857 1738 954">An invitation from you to try and resolve the conflict without going to court has a good chance of being accepted. It's worth a try!</p>
 <p data-bbox="159 1317 779 1458">« This sort of thing doesn't work when trust is broken or if the people involved aren't interested in talking to each other any more. »</p>	<p data-bbox="884 1089 1724 1154">A conflict can be resolved in other ways even where relations between the people involved are strained.</p> <p data-bbox="884 1187 1766 1252">If you feel that you can't discuss things directly with the other person, ask someone to accompany you or speak on your behalf.</p> <p data-bbox="884 1284 1780 1406">Also, a neutral person who isn't involved in the conflict can cool things down. For example, a mediator gives each person a chance to express his point of view in a respectful manner. This re-establishes communication and restores trust.</p> <p data-bbox="884 1438 1472 1471">Find out more about mediation on page 32.</p>



« Discussion isn't possible anymore if the case is already in court. »

An out-of-court resolution is possible any time. Furthermore, more than 9 out of 10 cases are settled before trial.

The law even provides for a process that attempts to resolve conflicts without going to court even after legal proceedings have been filed. A judge will conduct a meeting called a "settlement conference" in which the parties try to resolve the conflict together, with the judge's guidance.

You can even agree on certain things after judgment has been handed down. For example, if a judgment orders you to pay an amount of money, you and the other party are free to agree on payment dates. You would be respecting the judgment, but according to a payment schedule that you both agreed on.

Misconceptions or preconceived ideas about the mediator's role

MISCONCEPTIONS OR PRECONCEIVED IDEAS



« The mediator will take sides. »

FACT

A mediator can't and won't take sides in your conflict. A mediator is governed by a code of ethics and is, by definition, impartial.

The mediator encourages the sharing of information, facilitates discussion between the people involved and will help you target the different aspects of your conflict. The mediator will also explore all possible solutions with both of you in an attempt to resolve the conflict satisfactorily for everyone.

Find out more about mediation on page 32.

3

**RESOLVING A CONFLICT ON YOUR
OWN THROUGH NEGOTIATION**

Do you want to try and resolve your conflict on your own? If yes, then before you start, you'll have to be prepared: you'll need to identify your motivations and understand them. You'll also have to find out the rules that apply to your situation, get advice and plan the upcoming negotiation.

Then, with the right attitudes, you'll be ready for successful negotiation. And remember — even if you want to resolve your conflict on your own, you can always seek professional help to find a solution.

1 IDENTIFYING YOUR MOTIVATIONS

Why do you want to resolve the conflict? What is the most important thing for you? What is and is not negotiable? Asking yourself such questions will help you choose the best conflict resolution method for your situation.

How important is your relationship with the other person?

OUI NON

Do you want a chance to present your point of view to the other person, and when his turn comes to present his point of view, will you listen with an open mind?

Are you prepared to work with the other person to find a solution?

OUI NON

Are time and cost important factors for you?

Could someone neutral help you resolve the conflict?

If you answered “yes” to any of the above questions, going to court would probably not be the best option in your situation. For example, collaborative negotiation (explained on page 27) or mediation (page 32) could help you resolve your conflict.

2 KNOWING THE RULES THAT APPLY TO YOUR SITUATION

Be aware that you could lose certain rights with the passage of time. This is called “prescription”. Therefore, you’ll have to check that you’re still within the legal time limits to exercise your rights and whether you have to speed things up.

You’ll also have to find out if any other rules apply to your situation.

Every situation has specific legal rules, for example:

— certain conditions must be met for a problem to be considered a hidden defect;

— certain conditions must be met for someone to be held legally responsible to pay compensation to another person for damages that person has suffered;

— in work conflicts, certain labour law rules may apply;

— etc.

Let’s consider the example of the two neighbours in conflict. They should determine whether or not their situation would be characterized as a «neighbourhood annoyance». That information will affect their discussions for resolving their conflict and their expectations regarding possible solutions.



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You can find such legal information on your own, on the Internet, for example. Make sure you consult reliable resources. You’ll find a list of such resources at the end of this guide, in the section called “References and resources for further research”, on page 42.

3 YOU CAN SEEK ADVICE AT ANY TIME

Even when you want to resolve the conflict on your own, nothing prevents you from consulting a professional (a lawyer, a notary, your local community justice centre). They'll give you a clear picture of your rights and obligations, which would put you in a better position to begin discussions with the other person.

For certain kinds of conflict, it is almost inevitable that you'll need outside help. For example, you may need an expert report on a technical issue to resolve a conflict concerning a hidden defect. Having such a report could make your discussions more straightforward.

You can consult a professional *at any time*, no matter where you are in the process.

4 PREPARING FOR NEGOTIATION

If you choose negotiation to resolve your conflict, you need to be prepared. Summarize the important facts that you want to raise. That exercise will help you to:

- express yourself properly;
- make yourself understood;
- send the right message; and
- reduce your stress.

Also, before you contact the other person, you should identify your own needs, values, interests and emotions.

To do that, try to answer questions that begin with “Why”. In our example of the separated parents in conflict, here are some sample questions and answers for the parent who prefers a sports-study school for his son:



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Why do I want to send my son to a school that combines sports and study?

Because sports teach discipline and that's an important value for me.

Because I went to such a school. I loved the team spirit there and would love my son to have such an experience.



Why don't I want send my son to the local school?

Because I don't think the local school would have the same positive atmosphere.

Also, try to change how you approach the problem. Instead of saying “I want...” or “I insist...”, ask yourself “what are my needs?”. Then, put yourself in the other person’s shoes and ask yourself what his needs are. You might discover that you have some shared needs and interests! It’s a good starting point for finding common ground.

In the example of the co-workers in conflict, their shared **interest** would be performing their jobs well. To achieve that, they both **need** to reduce their stress at work.



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5 INVITING THE OTHER PERSON TO NEGOTIATE

Now that you’re prepared, contact the other person and suggest trying to resolve your conflict through frank discussion. Pick a time that suits everyone so that you can discuss the issues fully.

If you want to ensure that your discussions stay confidential, have all the negotiators sign an agreement. You’ll find a confidentiality agreement sample letter at the end of this guide, on page 46.

6 ROOM FOR COLLABORATIVE NEGOTIATION

In collaborative negotiation, the persons involved in the conflict discuss the issues and try to reach agreement. The discussion is frank and focuses on finding a solution that will satisfy each party's needs. Unlike traditionally adversarial negotiation, there isn't a winner and a loser. In collaborative negotiation, both parties work together to find a "win-win" solution for everyone.

During negotiations, you should listen closely to what the other person has to say. Remember the old saying: "You were born with two ears and one mouth, so you should do twice as much listening as talking".



When you listen, pay close attention and don't think about what you're going to say in reply.

Try to understand the other person's needs, values, interests and emotions.

Summarize his point of view to be sure you've understood it properly.

Focus on your shared interests and needs.

Try to depersonalize the conflict: avoid using "you", "your", "me", "I", "mine" and used "we", "us", and "our" instead.

Avoid blaming the other person. Remember that you're in "solution" mode, not "your-fault-not-mine" mode.

Suggest solutions that meet both your needs and those of the other person. It will increase your chances of reaching agreement. Remember that there are no winners or losers. Negotiation will be successful if you agree on a solution that both of you can live with.



7 ATTITUDES CONDUCIVE TO THE SUCCESS OF A COLLABORATIVE NEGOTIATION

Listening is key for successful collaborative negotiation. But it's not the only thing. There are a few other attitudes that you need for collaborative negotiation to succeed.

Throughout the negotiation, demonstrate open-mindedness and good faith. Be transparent. If you enter into negotiations reluctantly, believing that the other person has got it all wrong and that you're the only one that's got it right, there's a good chance the process will fail.

Well-controlled emotions can also help to ensure that the negotiation goes smoothly. But

avoid trying to do so at all costs. Name them, accept them and understand them. They're perfectly valid. If you need to, take a break to pull yourself together.

In all negotiations, everyone should be on an equal footing. If you feel intimidated or manipulated by someone, then negotiating directly with that person is not the best way to resolve your conflict.

If you're uncomfortable negotiating directly with the other person, or if you feel you don't have the right attitudes or skills, you can get help.

8 GET HELP FROM A LEGAL PROFESSIONAL

You don't have to hire a lawyer or notary to negotiate with the other party. However, a legal professional can help you by doing the following:

informing and advising you of your rights and obligations related to the conflict;

being present during the negotiation to give you confidence and moral support;

speaking on your behalf and discussing the issues with the other person; and

drafting the agreement between you and the other person.

To help you decide, the following table sets out the advantages and disadvantages with and without a legal professional.

WITH THE ASSISTANCE OF A LEGAL PROFESSIONAL

- + You'll be given information and legal advice.
- + You'll have a spokesperson who is emotionally detached from the conflict.
- + You'll have the services of a skilled negotiator (some legal professionals specialize in collaborative negotiation).
- + You won't have to talk to the other person if you don't want to.
- You'll have to pay professional fees.
- The other person involved in the conflict may become more defensive if a legal professional does the talking for you.

WITHOUT THE ASSISTANCE OF A LEGAL PROFESSIONAL

- + You won't have any legal fees.
- + The other person involved in the conflict may interpret your acting alone without a lawyer as a sign of open-mindedness.
- You'll have to do your own research to find the legal information that applies to your situation, and you won't have the benefit of legal advice.
- You'll have to communicate directly with the other person, even if you don't want to.
- You might feel at a disadvantage if the other person is more skilled at negotiating than you or is represented by a lawyer.
- If you have difficulty controlling your emotions, it could negatively affect your discussions.

9 OTHER PROFESSIONALS COULD HELP YOU

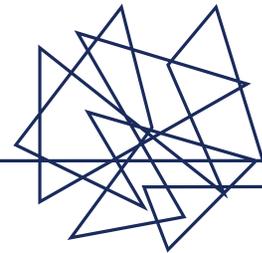
Don't hesitate to consult other kinds of professionals if you feel that you need outside help to resolve your conflict. More than one kind of professional can help you resolve the different aspects of your conflict.

Find the right person (an accountant, psychologist or engineer) to help you find an effective, lasting and fair solution to your conflict.

For example, a human resources consultant could help co-workers in conflict. That person would act as a mediator and help them work together to find a solution to their conflict.



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4

**RESOLVING A CONFLICT WITH THE
ASSISTANCE OF A MEDIATOR**

If you'd like to resolve your conflict through mediation, you need to understand the process and the role that each person plays. You'll also want to know how to go about inviting the other person to take part in a mediation process and how to find and choose a mediator.

Even if you don't reach agreement, the mediation process will have been worthwhile in some aspects. And you will still have other conflict-resolution options.

Some of the information in the section "Resolving a conflict on your own through negotiation" on page 21 could also be useful in mediation. Have a look at it.

1 MEDIATION IS A GUIDED AND CONFIDENTIAL DISCUSSION

In mediation, the parties meet on a voluntary basis to discuss and try to resolve their conflict. Remember, you can always drop out of a mediation process. The important thing about mediation is that it can re-establish communication between both people, and communication is essential for resolving conflict. Someone neutral who is not involved in

the conflict can facilitate discussion and guide the search for solutions.

Except in certain rather rare circumstances, all discussions and written documents exchanged in mediation are confidential. Only the persons involved may have access to them. This means that they can negotiate with greater transparency.

2 THE MEDIATOR'S ROLE

When you use a mediator to help you resolve your conflict, his role is to guide your discussions with the other person so that both of you together, by yourselves, can find a solution to your conflict.

The mediator can help you in several ways:

by encouraging both of you to communicate and cooperate with each other;

by ensuring that each person can express his point of view regarding the conflict;

by helping you to better understand the other person's position; and

by suggesting interesting and workable solutions.

The mediator must treat each of you fairly and must **remain neutral** in the conflict.



The mediator doesn't take sides, doesn't give legal advice and doesn't represent either party in the conflict. The mediator has no decision-making power and can't impose a solution to resolve your conflict.



3 YOUR ROLE

When you agree to take part in mediation, your role is to:

participate in discussions with an open mind, for example by being willing to understand the other person's motivations;

act in good faith, for example by not deliberately obstructing the process;

be transparent with the other person, for example, by not holding back important information; and

actively cooperate in seeking a solution.

You'll be asked to give your point of view and to listen to the other person's point of view.



4 SUMMARY OF THE MEDIATION PROCESS

RULES. Before beginning the mediation process, the mediator will explain each person's role and obligations. Together, you will specify the rules that apply in your mediation sessions, for example, how long the process will last and the possibility of inviting other people to take part in discussions.

PRE-MEDIATION MEETING. The mediator may suggest meeting each person individually in a "pre-mediation" session. This allows the mediator to ensure that each person properly understands the goals of the process.

CONFIDENTIALITY AND FLEXIBILITY. In the first meeting, the parties will sign a confidentiality agreement. Mediation can take place in person or by telephone or videoconference, for example, while ensuring that discussions remain confidential.

HAVING YOUR SAY. Discussions are held with everyone involved in the conflict. In the mediation sessions, each person will have an opportunity to state his values and explain his needs and interests.

CAUCUSING. Discussions may also be held in small groups. The mediator may hold meetings separately with the people involved in the conflict. Such a meeting is called a caucus. When the mediator calls for a caucus with one party, he must inform the other party. Often, in the interests of fairness he'll call for a caucus with the other party in order to understand each person's motivations.

TERMINATING THE PROCESS. It could take several sessions to find a solution. You can decide to leave a session or terminate the mediation process at any time. You don't have to give reasons. The mediator could also terminate the process if he believes that mediation has little chance of success or that it will be seriously prejudicial to one of the people involved.

5 THE COSTS OF MEDIATION

The costs of resolving your conflict through mediation will depend on several factors:

the mediator's fee (his hourly rate, travel expenses, etc.);

the number of sessions required to reach agreement; and

the costs of expert assessments or actions (which the people involved would have to agree on).

Usually, the mediation participants share the mediation fees equally. But you could make a joint decision to share them differently.

If you incur out-of-pocket expenses, for example, travel expenses to attend a mediation session, you'll have to pay them. However, you could be entitled to have them reimbursed if you have legal insurance or are entitled to services under an employee assistance program.

In certain family conflicts, former spouses may be entitled to mediation services offered free of charge by the Quebec government. Find out from your mediator.

6 INVITING THE OTHER PERSON TO MEDIATION

If you're interested in mediation, talk to the other person first and suggest that using a mediator could help you both to resolve your conflict.

If you're uncomfortable talking to the other person face-to-face, you could send him a letter inviting him to attend mediation. You'll find an invitation sample letter at the end of this guide in the Appendices section, on page 47.

7 CHOOSING A MEDIATOR

You and the other person must agree on a mediator who is not necessarily a lawyer or a notary. He could be a professional who knows the field related to your conflict.

You and the other person would choose the mediator together once you have determined what qualifications that person should have. If you can't agree on a mediator, you would each nominate a mediator and those two mediators would then choose a third person to be the mediator in your case.

The important thing is that both of you have confidence in the person chosen as the mediator.



In the co-workers example, a human resources professional or psychologist could be the mediator. A volunteer mediator in a citizen mediation centre could also be your mediator.

see p. 10

8 FINDING A MEDIATOR

Ask around: someone in your circle of friends and acquaintances might be able to recommend a mediator that he knows personally or has heard good things about.

If you can't get a recommendation from someone you know, the Ministère de la Justice du Québec has an online directory of certified civil mediators called the [Directory of accredited civil mediators](#) or the [Directory of family mediators](#). Also, the website of the Institut de médiation et d'arbitrage du Québec (IMAQ) (French only) provides a [list of qualified professionals](#) who act as mediators. Both online resources let you search for a mediator on the basis of specific criteria such as:

— field of expertise

— geographical location

— profession

— spoken languages

For certain types of conflicts, such as conflicts with a neighbour or a co-worker, a citizen mediator could help you find a solution free of charge. For more information on citizen mediation, consult the following websites:

Association des organismes de justice alternative du Québec (ASSOJAQ) (association of alternative justice organizations) and Équijustice (network of restorative justice and community mediation) (the links are in the section "References and resources for further research", on page 42).



— see p. 10



— see p. 10

Should you choose a certified mediator?

In most cases, a mediator does not have to be certified. However, there are certain advantages to hiring a certified mediator who has received training recognized by the Ministère de la Justice. For example:

— You can be assured that he follows a code of ethics and has liability insurance.

— You have greater confidentiality because even a court can't force him to disclose what was said or what he found out during mediation.

9 BENEFITS, EVEN IF THE PROCESS FAILS

In most cases, mediation helps people to resolve their conflict. However, sometimes mediation will resolve only part of your conflict or you won't be able to reach agreement with the other person.

Even if your conflict can't be resolved by mediation, the process will at least have given you:

a better understanding of the other person's point of view, and
an opportunity to express your needs and interest.

Those things will certainly make it easier for you to take the next steps in resolving your conflict.



10 YOUR OPTIONS IF THE PROCESS FAILS

Mediation is only one of your options for trying to resolve your conflict. If mediation was not successful in resolving your conflict, there are other ways to achieve that goal such as participatory justice, collaborative law and arbitration.

Find out from a lawyer or notary who practices “alternative dispute resolution” or who specializes in “dispute prevention and resolution (DPR) processes”. He’ll be able to tell you about all the other ways to resolve your conflict.

Also, bear in mind that going to mediation does not prevent you from taking legal action. You can decide at any time to go to court if you think that would be the best way to resolve your conflict. You would then consult with a lawyer who would prepare and present your case. You could also do that yourself, without a lawyer, in which case, you should consult the various guides published by the Fondation du Barreau entitled [Representing Yourself in Court](#).

5

**REFERENCES AND RESOURCES
FOR FURTHER RESEARCH**

1 DO YOU WANT TO KNOW MORE ABOUT THE LAW?

ÉDUCALOI: If you want to find out more about the legal rules that apply to your conflict, as well as your rights and obligations, Éducaloi provides free legal information in plain English on its website.

www.educaloi.qc.ca/en/

COMMUNITY JUSTICE CENTRES: Your local community justice centre provides free and confidential legal information services. The lawyer or notary that you'll consult cannot take a position regarding your conflict, but he will be able to answer any questions you may have and, if necessary, refer you to the appropriate resources if necessary.

www.justicedeproximite.qc.ca/en/

2 DO YOU WANT LEGAL ADVICE?

FINDING A LAWYER OR A NOTARY: If you want advice from a legal professional, the Barreau du Québec and the Chambre des notaires have search tools for finding a lawyer or a notary who can meet your needs.

<https://www.barreau.qc.ca/en/directory-lawyers/#!/search>

<https://trouverunnotaire.cnq.org/en/find-a-notary.html>

3 DO YOU WANT TO TAKE PART IN MEDIATION?

FINDING A CERTIFIED MEDIATOR: If you want your mediation to be handled by a certified professional, consult the online search tools of the Ministère de la Justice du Québec and the Institut de médiation et d'arbitrage du Québec.

<https://www.justice.gouv.qc.ca/en/your-disputes/dispute-prevention-and-resolution-dpr-processes/mediation/directory-of-accredited-civil-mediators/>

(Click on “Directory of accredited civil mediators”)

www.imaq.org

(Click on “Trouvez un médiateur ou un arbitre”) (in French only)

FREE MEDIATION SERVICES: If you want to use citizen mediation services, the Association des organismes de justice alternative du Québec and Équijustice can assist you in the process. The Université de Sherbrooke Mediation Clinic

also provides free mediation services to the public.

www.assojaq.org/membre_assojaq

<https://equijustice.ca/en/find-a-service-point>

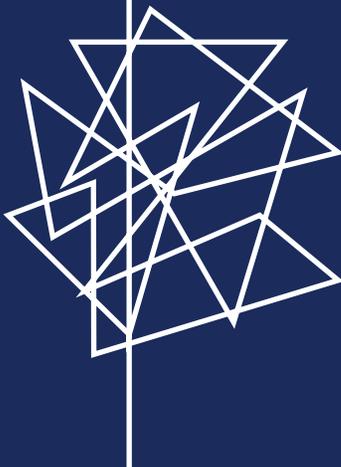
https://www.usherbrooke.ca/clinique-mediation/fileadmin/sites/clinique-mediation/documents/Depliant_mediation_VA.pdf

FINDING A FAMILY MEDIATOR: If your conflict concerns your parental role or a separation, you can consult a family mediator. The Ministère de la Justice du Québec and the Association des médiateurs familiaux du Québec both provide search tools for finding a family mediator.

<https://www.justice.gouv.qc.ca/en/couples-and-families/separation-and-divorce>

(Click on “Search for family mediator”)

www.mediationquebec.ca/en/directory/recherche_avancee



APPENDICES

CONFIDENTIALITY AGREEMENT

We acknowledge that the content of our meetings and discussions in an attempt to resolve our conflict concerning (briefly detail your conflict) _____ is confidential.

We undertake not to disclose any information or documents related to our negotiations, whether as evidence in a court of law or elsewhere. We agree not to record our discussions in any way.

To terminate this confidentiality agreement, in whole or in part, we undertake to obtain the written consent of each person involved in the negotiation.

Date:

Place of signature:

Signature and first and last name in block letters:

JOHN SMITH

MARY JONES

EXAMPLE

INVITATION LETTER

BY MAIL

Boucherville, August 14, 2018

Martin Martineau
123 Lachance Street
Boucherville, Québec J3B 2N4

Subject: Invitation

Dear Mr. Martineau,

We have been neighbours for several years now. The fence that separates our properties is deteriorating, leaving large gaps in some places. This situation is becoming increasingly problematic as your dog has been coming onto my property and damaging my garden.

Because the fence is on the dividing line of our respective properties, we must share the cost of repairing or replacing it. This is why I came to see you on a few times to discuss our various options but you did not seem interested in considering them. However, it would be in both our interests to fix or replace the fence, given its present condition.

In an effort to resolve the situation amicably, I would like to invite you to take part in a negotiation or mediation process that would address our respective needs. Such a process could result in a fast and cost-effective solution while at the same time preserving good neighbourly relations. If you would be interested in pursuing this approach, please let me know so that we could discuss the process in greater detail.

However, please note that if you refuse to meet with me, or if our discussions do not result in an agreement, you will be sent a formal letter of demand.

I look forward to hearing from you soon.

(Your signature)

Réjean Madelard
125 Lachance street
Boucherville, Québec J3B 2N4
450-123-4567

(Your name, address and telephone number)

ABOUT US

The Fondation du Barreau du Québec is a non-profit organization that participates in the progress of society by contributing to the advancement of legal knowledge. The Foundation supports and gives awards for activities that raise awareness about the role of the law and the legal profession in society.

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