

YOUR  
CONFLICT

YOUR  
SOLUTIONS

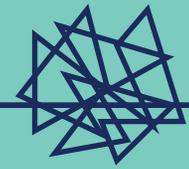
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IN BUSINESS

FONDATION  
BARREAU  
DU QUÉBEC **F**



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# FORWARD

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## LEGAL VALIDITY

The law is constantly evolving. The legal information in this guide is valid as at July 2021.

## LEGAL OPINION

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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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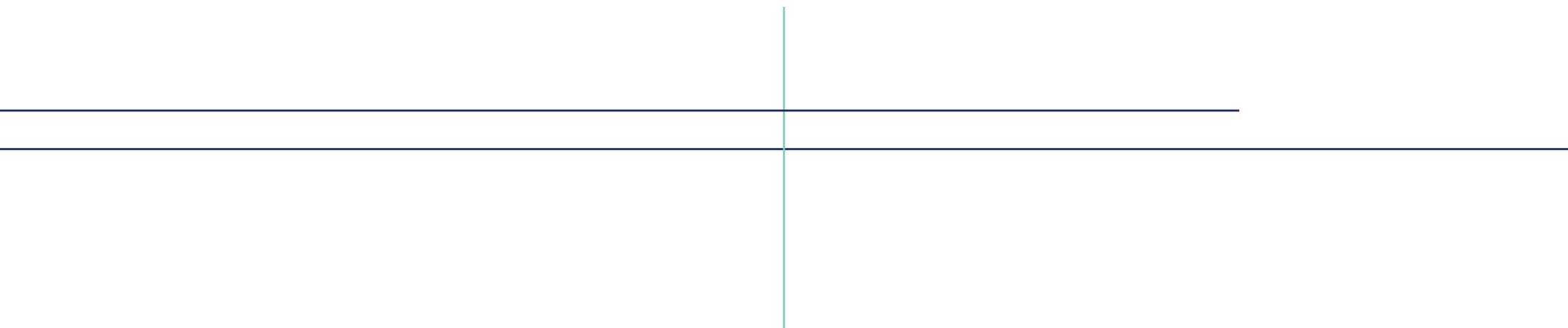


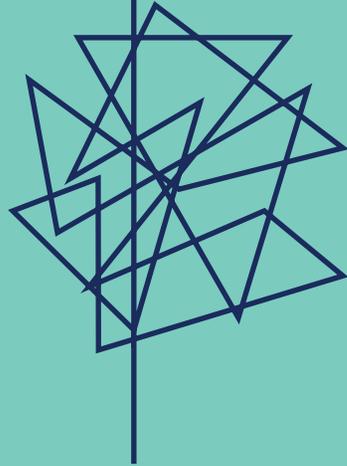
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# INTRODUCTION



# RESOLVING YOUR BUSINESS CONFLICTS

You often encounter conflict situations when you do business. Most of the time, you can resolve them on your own. But some kinds of conflict require more time and resources to find a solution. If you're unsure of your options or where to even begin with such conflicts, then you'll find this guide useful. It will help you recognize those conflicts and choose the appropriate conflict resolution method to achieve a workable, fair and lasting solution.

This guide describes the various aspects of business conflicts. There are more secondary consequences to conflict than you may realize!

You will learn more about the different ways to resolve a business conflict such as negotiation, mediation, arbitration, and combined mediation/arbitration and which one is best suited for resolving your particular kind of conflict.

At the end of the guide you'll find a list of useful resources and practical tools for going further in your efforts to resolve your conflict.

Resolving a business conflict is good for both you and your business. You'll be able to focus on your business objectives in a more relaxed and confident frame of mind.



1

**INVOLVED IN A CONFLICT? DEFUSE IT!**

The thunder is rumbling, the sky is darkening —the familiar signs of an approaching storm. A looming business conflict feels the same. If you are someone’s business associate, business partner or general contractor, here are some typical conflicts you might encounter:

- you and another shareholder clash over the direction in which the company should be moving;
- you’re a general contractor and you’re not happy with the work carried out by your plumbing subcontractor (disappointing quality of work, deadlines not met, etc.);
- one of your partners signed a confidentiality agreement or a non-compete clause as part of your business negotiations, but has failed to respect it.

Such conflicts can arise from a disagreement, from the inaction of one or both parties or because discussions have reached an impasse. A conflict can be defused by focusing on its root cause, by keeping the lines of communication open and by stepping back from the situation.

# 1. FOCUSING ON THE ROOT CAUSE OF THE CONFLICT

A disagreement stemming from opposing views is often the root cause of conflict. Realizing this can make it easier and faster to defuse the conflict.

When you focus on the source of the conflict, you prevent it from becoming more complicated. You can figure out what needs to be discussed, considered and negotiated. Approaching the situation in this way helps you to identify the reasons for the conflict, understand it better and be open to exploring appropriate solutions. It helps you to distinguish between your emotions and the real reasons for the conflict.

## TAKE NOTE

**Often the parties don't even know what they're arguing about! When a disagreement occurs, you should reflect on the reasons for it, and jot them down. Later, you'll have notes to refer to if necessary. Doing this can help clarify your objectives in resolving the conflict.**

# 2. KEEPING THE LINES OF COMMUNICATION OPEN

Maintaining ongoing and positive communication can help resolve the conflict. The purpose of keeping the lines of communication open and positive is to understand of the other party's concerns and

be able to convey your own. With this goal in mind, it becomes possible to identify common ground, explore options and hopefully find solutions to the conflict.

Although saying nothing in such situations is a human and normal reaction, it can intensify a conflict. Saying nothing is usually motivated by:

- fear of aggravating the situation;
- thinking it's a way to gain time;
- magical thinking: believing that the problem will resolve itself or simply disappear;
- fear of saying too much;
- laziness or slackness;
- assuming it's the right strategy.

Whatever the underlying reason, silence makes managing the conflict that much more difficult. Although this approach may calm the mind, if it goes on for too long, it could actually lead to a breakdown in communication. Always keep in mind that communication is crucial in finding a solution to conflict.

### Tips on how to maintain communication:

- always be respectful and maintain a calm tone;
- respond to the other party's communications;
- take the time to listen and be receptive to what the other person has to say;
- ask questions to gain a better understanding of the other person's point of view and concerns;
- communicate with the other person using the pronouns "I", "we", and "our" instead of "you" and "your";
- don't presume to know the other person's intentions and don't jump to conclusions;
- focus on common interests and shared goals.

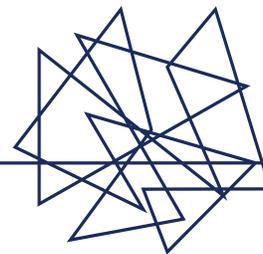
### 3. STEPPING BACK

There will be times when you feel you've reached a dead end or are up against a brick wall. This happens, for example, if one of the parties:

- simply stops responding to communications from the other party;
- severs all ties with the other party (stops coming to work, stops cooperating or completely ignores the other party);
- is disproportionately afraid of the other party and withdraws into himself.

In such a no-exit situation, you feel helpless. You feel stuck and can't imagine how you'll be able to resolve the conflict. This is usually the point at which you consider taking legal action.

But before you go that route, step back and reassess the situation and the conflict itself. Legal action may resolve the conflict, but it will be primarily from a legal perspective. However, other things besides the strictly legal aspect of the conflict must be considered.

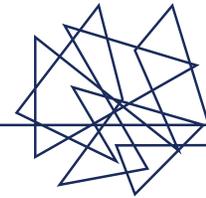


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**CONFLICT IS LIKE A RUSSIAN DOLL**

Often conflict resembles a Russian doll. The smallest doll represents the source of the conflict. The other dolls that fit on top of it represent its various aspects, such as:

- the legal aspect;
- the emotional and relational aspect;
- the financial aspect.



As the conflict escalates, so does its various aspects.



# 1. THE LEGAL ASPECT OF CONFLICT

It's normal to want to assert your rights when you're involved in a conflict. After all, both parties should respect their initial commitments. Reciprocal rights and obligations often stem from the following kinds of contracts:

The following are some examples of business contracts:

- a shareholders' agreement;
- a general partnership (SENC) agreement;
- a purchase order;
- an accepted bid;
- an exchange of e-mails;
- etc.

Also, remember that a handshake or verbal agreement is a valid contract.

There are times when you have to consider the original purpose of the contract. The negotiations and discussions that preceded the contract are an indication of the real intentions underlying the contract. Sometimes those intentions are not properly reflected in the written contract or were not discussed when the contract was entered into.

## TAKE NOTE

**Keep your contract and re-read it.**

**If necessary, ask a legal advisor to explain your contract and its scope and consequences. He or she can also guide you and support you in your efforts to resolve your conflict.**

Sometimes matters that are collateral to the contract can have legal consequences. For example:

a supplier publicly criticizes your products and services on social media,

a home renovation client is dissatisfied with the quality of your work.

Lastly, there simply may not be a contract between you and the other party to the conflict. For example, your customers can't access your place of business because your neighbor's delivery trucks are taking up all the parking spaces.

Remember that there are certain situations in which legal protection mechanisms will apply. A conflict would then be handled by a specialist body, such as:

the Office de la protection du consommateur (OPC), for conflicts between merchants and consumers;

the Association provinciale des constructeurs d'habitation du Québec (APCHQ), for conflicts between clients and new-home builders ;

the Alliance de l'industrie touristique, for conflicts between clients and companies operating in the Québec tourism industry.

If you're a contractor, note that the protection mechanisms differ from traditional legal remedies. Contact the contractors' resources in your area for assistance with the conflict resolution procedures. Several resources are listed on page 53.

## 2. THE EMOTIONAL AND RELATIONAL ASPECTS OF CONFLICT

Emotions are part and parcel of conflict and it is normal to go through some. Acknowledging your emotions can help you to cope better with the conflict and distinguish between your emotions and the root causes of the conflict.

Here are examples of some emotional reactions you may have:

you feel unprepared and are undecided as to what course of action you should take to resolve the conflict; you're worried making the situation even worse, etc;

you're feeling unhappy, aggressive, angry or irritated because of the conflict or the other party;

you're feeling anxious about the conflict and hurt by what the other party has been saying;

you're tormented by what the other party is saying; you feel betrayed; the conflict is constantly on your mind.

There are many other negative emotions that are not always easy to identify such as confusion, disappointment, denial, sadness, fear, surprise, shame, guilt.

Also, the other person may be treating you disrespectfully or may have offended your values, principles and convictions. For example, the other person may put you down, no longer consider you a worthy business partner or no longer acknowledge you as an expert or authority in your field. He may be negatively affecting your reputation.

Your emotions and those of the other party should be considered, because you're both involved in a business relationship that was built over time and is now weakened by conflict.

Your business relationship may deteriorate because trust has been eroded. This can have financial consequences for you and your business.



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### 3. THE FINANCIAL ASPECT OF CONFLICT

A business conflict often has a financial aspect that can affect your own financial health and that of your business.

There are several root causes for the financial aspect of a conflict, such as:

failure to comply with an agreement;

non-payment;

a hidden defect;

damage suffered by one of the parties.

You should be aware that the financial aspect of a conflict goes beyond the actual amount at stake; it includes the financial consequences resulting from the conflict itself.

# 3

**THE FINANCIAL CONSEQUENCES OF  
CONFLICT: BEYOND THE AMOUNT AT STAKE**

There are several financial consequences involved in conflict. The consequences are often hidden and therefore not considered. Apart from the actual amount at stake in the conflict, you could sustain financial losses.

You could suffer damage to your reputation, decreased productivity and incur expenses in relation to the conflict itself or the methods used to resolve it, not to mention other financial consequences specific to your situation.

Conflicts and their associated consequences are a natural, normal and unavoidable part of doing business. Your objective should be to consider all the possible financial repercussions of the conflict so that you can make the best decisions for you and your business.



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## 1. YOUR REPUTATION AND YOUR BRAND IMAGE

Often, information concerning the conflict and you personally becomes public when your case enters the court process. Your reputation and that of your company could be negatively affected.

You could lose clients and business, resulting in short-, medium- or long-term financial consequences.

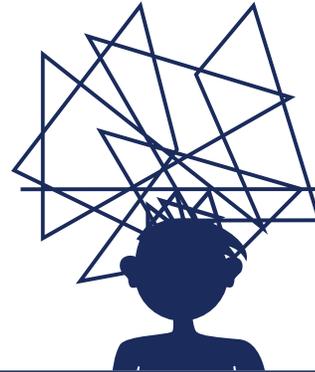
You should consider these possible consequences when deciding on the best way to resolve your dispute.

## 2. YOUR PRODUCTIVITY

When there is a conflict, you and your business have to focus energy and resources on resolving it, to the detriment of productivity. Be aware that conflict can have broader implications, depending on the scope of the conflict.

For example, it can:

- negatively affect team and employee motivation;
- generate a tense work environment;
- cause apprehension and uncertainty about the company's future.



All these factors can have financial consequences for the company and will need to be considered depending on the magnitude of the conflict.

In short, you should consider all the financial consequences of a conflict in order to choose the best way to resolve it

### 3. OTHER COSTS DIRECTLY RELATED TO CONFLICT

Other costs are directly related to a conflict and may increase as the conflict escalates, such as:



These financial consequences must also be considered in deciding on the best way to resolve your conflict.

4

**SAVE MONEY BY NOT GOING TO COURT**

Resolving your conflict without going to court will reduce the financial consequences related

to the conflict. But the myths surrounding alternate conflict resolution methods persist, compounded by our strongly entrenched «lawsuit culture».



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## 1. THE «50-50» MYTH

True or false: You'll have to absorb half your losses if you want to settle your dispute without going to court.

You'll end up with half the amount at stake.

Both statements are false.

There are several advantages to choosing the alternative conflict resolution route, even if not all of your proposals for resolving it will be accepted. Be open to the other party's proposals. You could be pleasantly surprised.

There are other financial consequences and costs associated with a conflict that you would reduce by settling the matter out of court. Maybe you won't get the full amount at stake, but you'll certainly reduce your other financial

consequences not to mention the time involved in going to court.

There are other benefits too, such as achieving solutions tailored to your needs. They may take a non-monetary form, such as:

ensuring that your ultimate agreement remains confidential;

providing goods or services equal in value to the financial loss instead of a monetary amount;

the staggering of payments or work;

providing an opportunity for apologies to be exchanged.

## 2. FROM A «LAWSUIT CULTURE» TO A «SETTLEMENT CULTURE»

Is going to court the first thing you think about doing in a conflict situation? This is a normal reflex. You and the other party start sending each other demand letters, the first step on the road to the courthouse.

However, a demand letter could be used as a door-opener to negotiation or a conflict-resolution process other than litigation. Chances are you'll be able to resolve your conflict without going to court.

### TAKE NOTE

**You can also provide for conflict resolution in your contracts. Such a clause will stipulate that conflicts are to be dealt with by mediation, arbitration or some other method adapted to your situation. You will find an example of such a clause on page 58.**

By going to court, you are asking a judge to resolve your conflict in a manner that you hope will be in your favour. But what do you really want? Do you want to be right or do you want to achieve what is best for you and your business? Is a judge really in a position to decide the best options for you and your business?

Actually, you're the best person to make such decisions.

Alternative conflict resolution methods are not based on deciding who is right and who is wrong. They are based on assessing what is in everyone's best interests. They also give you an opportunity to:

- be heard by the other party;
- state your views;
- find workable solutions for both parties. .

You could therefore negotiate a settlement agreement that is tailor-made for the conflict. You will be able to substantially agree on the content of the agreement. Admittedly, sometimes going to court will be unavoidable,

but if you can settle your dispute without going to court, you will benefit from a legal, emotional, relational and financial perspective.



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### 3. THINK ABOUT IT BEFORE RUSHING OFF TO COURT

Did you know that you have to show the judge that you considered alternatives to going to court to resolve your conflict? There are other appropriate ways to try to resolve your conflict, such as:

negotiation: For greater detail, see page 37,

mediation: For greater detail, see page 41,

arbitration: For greater detail, see page 45,

“med-arb”: For greater detail, see page 49.

5

GOING FROM CONFRONTATION TO  
CONCILIATION

Your business relationship with another party begins positively with both of you being willing to work together for the good of your businesses. When things are going well, your business relationship is balanced. You are supportive of each other, both businesses benefit as a result and the interests of both parties are aligned toward common goals.

In a conflict situation, we tend to focus solely on our own interests. We insist on asserting them without considering those of the other party. This reaction locks us in conflict mode and does not foster resolution.



## 1. LEARNING MORE ABOUT EACH OTHER

In order to resolve a conflict, the parties should get to know each other better. You do this by considering the following:

the size of your business;

your business relationship with the other party;

your company's history;

your perceived industry position (for example, that you are either an industry leader or a new player on the scene);

your sales performance, etc.

The items listed above do not represent arguments that will help resolve your conflict. However, they allow you to identify your own interests as well as the interests you have in common with the other party.

You will then be able to negotiate and present your arguments by first identifying your own interests and then by targeting those you have

in common. This allows you to find solutions to the conflict that are more appropriate because they will address individual as well as shared interests.

Such an approach fosters collaboration rather than confrontation.

**Important!** Considering common interests does not mean abandoning your own interests.

————— You should first identify your own interests before considering alternative solutions to the conflict or opting for a particular conflict resolution method.

————— You should then put yourself in the other person's shoes and try to determine his interests. You may well discover that you have certain shared needs and interests.

This is a good starting point for finding common ground.

For example, you need the name recognition and visibility that your business partner brings to the table despite the conflict between you concerning production, whereas your business partner needs your organizational skills to be able to do his job well.

You both have a vested interest in having your business relationship continue to grow.

## 2. CHANGING PERSPECTIVE TO RECONCILE COMMON INTERESTS

By shifting away from a competitive mindset, you create an environment that is conducive to communication and dialogue. This allows you to acknowledge your respective advantages and disadvantages.

You can change how you view your conflict. You can find other solutions that serve everyone's interests.

**Remember!** Focusing on common interests allows you to identify the best way to resolve the situation by genuinely considering the interests at stake for each party.

### Your options

You need to know what your options are before you can consider a proposal for resolving the conflict. If you're unable to resolve the conflict, you'll have to consider your options, such as:

— ending your association or partnership, sourcing from a competitor, taking legal action, asking your customer for more time to deliver your goods.

When considering your options, you must take into account their legal, financial, relational and emotional aspects and weigh them against the consequences of accepting or rejecting various proposals for resolving your conflict.

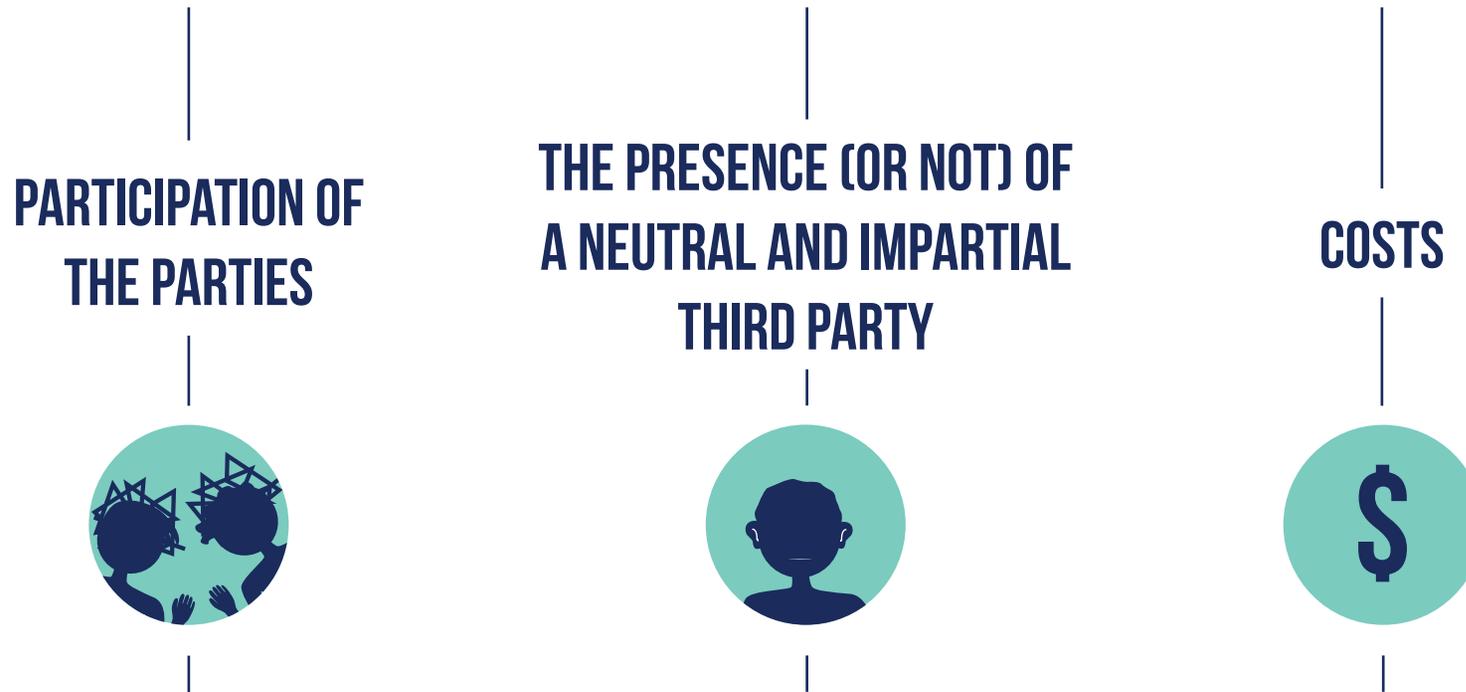
You should reject a proposal if it is less advantageous than your options, but consider them if they are more advantageous than your options.

6

RESOLVING YOUR CONFLICT

You'll find it easier to resolve your conflict in a spirit of cooperation and partnership.

You have several options for resolving conflicts. Going to court is only one option. In any event, they all involve the following to varying degrees:



Regardless of the stage you're at in your conflict-resolution efforts, you **always** have the option of consulting a professional for advice.

## The advantages to resolving your conflict through a conflict resolution process

Getting personally involved in resolving your conflict can be advantageous. Often, in addition to resolving the conflict, the solution can provide you with other benefits. For example, you could:

- achieve an original solution adapted to your situation;
- restore your business relationship with the other party;
- reduce the length and cost of the process and of the outcome;
- be assured that the process will remain confidential;
- minimize the damage to your reputation caused by the conflict;
- have less stress.

# 1. NEGOTIATION: PROVIDES GREATER LATTITUDE

## What is negotiation?



— With negotiation, there is no neutral and impartial third party: you negotiate directly with the other party. For example, you can exchange e-mails with the other party, have a business dinner together, call the other party directly, plan a formal meeting, etc.

— Lots of room to manoeuvre: you can negotiate all your business concerns. Provided it's not illegal, you can come to any kind of arrangement with the other party.

## Which negotiating style should you adopt?

— **Collaborative negotiation:** the parties involved in a conflict discuss matters in an attempt to reach agreement. Discussions are informal and are aimed at finding a solution that will satisfy the needs of both parties.

— **Competitive negotiation:** the parties often want to determine a winner and a loser. Because the focus is on winning, the parties employ various strategies and tactics in defending their respective interests.

Both negotiating styles can coexist depending on the points and issues being negotiated.

During the process, you may have to adopt both negotiating styles. The important thing is to recognize the other party's negotiating style so that you can adjust your negotiating style accordingly and either adapt your style to the other party's style or get the other party to adopt your negotiating style. If you come up with a win-win agreement, the negotiation will have been successful.

## Ensuring that your negotiations remain confidential

If you want to make sure that your discussions remain confidential, have every person present at the negotiation sessions sign a **confidentiality agreement**. At the end of this guide, on page 59, you'll find a model confidentiality agreement.

**Consider the following pointers to ensure that your negotiation goes smoothly. Adapt them to your situation because every conflict is different, every negotiation is different.**

**Before the negotiation :** prepare for the negotiation to ensure there are no surprises and that you make good decisions.

— Find out whether negotiations are still possible: Broken communications prevent negotiation. If this describes your situation, re-read the section entitled «Tips on how to maintain communication» on page 13.

— Sound out the other party: verify if he's interested in negotiating. Confirm who his official representative is and what authority he has for the negotiation. It's important to negotiate with people who have the authority to make decisions. See page 60 for a sample resolution by a company's board of directors.

Think about and be aware of the possibilities and limitations of your negotiation options. Try and do the same thing as regards the other party's options so that you will stay within the parameters that you set.

Learn more about the other party: be familiar with his representative's professional profile and find out what the other company's concerns are, etc. Try to figure out the other party's options.

**During the negotiation :** stay focused on your objective by sticking to the facts. This will make you better able to manage your emotions and avoid resorting to blaming and criticism. It would be a good idea to re-read the section entitled «The emotional and relational aspects of conflict» on page 19.

Maintain a positive negotiating environment: remain respectful and courteous. If necessary, remind the other party to do the same.

Respect the negotiation parameters: stay within the limitations you initially set when considering the proposed solutions. Remember your objectives, your interests and the scope of the negotiations.

Listen to the other party: to understand the issues, identify his needs and to try to determine meeting points for reconciling interests. Listen to the other party to find out his concerns are and the reasons for them. Remain willing to consider the other party's proposals. Suggest common options to find advantageous solutions for everybody.

**If you reach a mutually satisfactory solution, you can draft an agreement. If that is not the outcome, you could always renegotiate the agreement or consider another conflict resolution method.**

## An example of business negotiation

The two sole shareholders of a company stopped talking to each other a few weeks ago. They have opposing visions for the future of their company.

Shareholder A would prefer to consolidate current growth, but Shareholder B believes that current market conditions favour business expansion and he wants to open several subsidiaries across Quebec.

The shareholders decide to resume discussions with the help of their respective lawyers.

Owing to their negotiations, the shareholders have re-established communication and have drawn up a moderate growth plan, spread over several years, which can be modified according to market fluctuations. In addition, in two years Shareholder B will be entitled to create subsidiaries independent of the parent company and the shareholders have agreed that he alone will implement this plan.

## 2. MEDIATION: EXTERNAL PROFESSIONAL SUPPORT TO GUIDE YOU

### What is mediation?



- A formal and supervised process.
- Professional support: a neutral and impartial third party, known as a mediator, helps you resolve your conflict.
- The mediator's role: he helps the parties to clarify the issues involved in the conflict, to identify the needs and interests of each party, to explore options and to work out new solutions.
- Costs are shared by the parties: any fees that may apply for the services of a mediator are normally shared between you and the other party.

### The mediator's role

A mediator can help you in several ways. He or she can:

- foster communication and cooperation between you and the other party;
- give you and the other party an opportunity to express your respective points of view on the conflict;
- facilitate a better understanding of each party's situation;
- propose solutions that you hadn't considered

Consider the following points to ensure that your mediation goes smoothly. Adapted them to your situation because every conflict is different, every mediation is different.

**Before the mediation session:** be prepared for the mediation to ensure that it goes smoothly.ci.

— Find a mediator: choose the mediator with the other party. You could choose a certified mediator, i.e., someone who is trained and formally recognized by law. There are certified mediators who are experts in civil and commercial mediation. You could, of course, also do business with an uncertified mediator. Whether the mediator is certified or not, he may have experience in a specific field (construction, financial services, shareholder agreements, business, etc.)

— Have a contract of engagement drawn up before the mediation process: such a contract, drafted by the mediator, fixes the parameters of the mediation and the mediator's mandate. For example: confidentiality, possibilities of post mediation recourses, mediation fees, etc.

### Should you use a certified mediator?



There are a number of advantages in using the services of a certified mediator, although doing so is not mandatory. For example:

— You know that the mediator has undergone training in order to be certified.

— The mediator is required to comply with a code of professional ethics and must have liability insurance.

— You have greater confidentiality because the courts cannot force the mediator to disclose what was said or what he learned during the mediation process.

**During the mediation:** demeurez ouvert et suivez l'encadrement du médiateur.

— Be receptive to engaging in dialogue: Always be cordial with the other party and the mediator. If necessary, follow the mediator's instructions regarding speaking rights, which make possible orderly discussion of your conflict, your concerns and a potential solution.

— Follow the agenda if there is one: The mediator may suggest an agenda before the mediation session. An agenda guides discussions and allows them to evolve towards possible solutions.

— Consider all the various solutions: You can assess all possible solutions and take the time to think about them. As required, you can combine several possibilities to come up with a solution best adapted to your situation. You can also present your ideas for resolving the conflict.

— Review the final mediation agreement, if required: The final mediation agreement must reflect the solutions that were agreed to by the parties and how they are to be implemented. You can take your time to review it, either alone or with a legal advisor.

**Even if you're unable to resolve your conflict through mediation, you will at least have achieved the following:**

- a better understanding of the other party's position; and
- made your needs and concerns known.

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

## An example of business mediation

A supplier is repeatedly late in making deliveries to one of its customers, which in turn affects the customer's production line.

The customer stops paying in protest of the repeated delays.

The parties provided for mediation in the event of conflict. As a result of the mediation process, both parties now have a better understanding of the issues surrounding the late deliveries.

The parties agreed that in the future, a 5% penalty would apply for each day a delivery is late.

# 3. ARBITRATION: AN ARBITRATOR QUICKLY DECIDES A CONFLICT

## What is arbitration?



— Arbitration is similar to a trial: the arbitrator acts as the adjudicator, he hears both parties and then renders a decision called an arbitration award.

— It provides quick resolution of conflict and is often faster than going to court. The arbitrator is required to render a decision soon after the arbitration hearing.

— Limited room to manoeuvre: although the arbitrator and the parameters of the arbitration are set by the parties, it is the arbitrator who decides the conflict.

## Choosing your arbitrator

You should consider the following in choosing an arbitrator:

- Does he have technical knowledge or expertise in field to which the conflict relates?
- Is he experienced as an arbitrator in that field?
- Does he have good communication skills?
- Is he capable of being impartial?

You may want to choose an arbitrator who specializes in your field: architecture, engineering, accounting, health care, local and international business, etc.

Consider the following points to ensure that your arbitration goes smoothly. Adapt them to your situation because every conflict is different, every arbitration is different.

**Before arbitration:** choose your arbitrator carefully and establish clear rules for your arbitration.

— Confirm the arbitration and select the arbitrator: Arbitration requires the agreement of the parties, unless they contractually agreed to resolve conflicts through arbitration. The parties choose the arbitrator together.

Participating in a pre-hearing conference: The parties may be asked to attend a pre-hearing conference in certain situations, for the following purposes:

— to determine the conduct of the arbitration, including its duration and the various deadlines;

— to confirm the points in conflict and the objectives of the arbitration;

— to prepare for your arbitration hearing: confirm the attendance of your witnesses, compile and organize your documents (evidence) and think about your arguments.

### Should you use a certified arbitrator?

There are several advantages to using the services of a certified arbitrator, although doing so is not mandatory. For example:

— You know he has undergone training to become certified.

— He is required to comply with a code of professional ethics and must have liability insurance.

— You have greater confidentiality because the courts cannot force him to disclose what was said or what he learned during the arbitration process, unless one of the parties applies to have the arbitration award vacated.



**During the arbitration:** follow the procedures and instructions of the arbitrator intended to facilitate the arbitration.

— Present your point of view and your evidence: The arbitrator may ask you to provide both during the hearing or ask you to submit them before the arbitration hearing.

— Comply with the deadlines fixed at the beginning of the arbitration: You may be prevented from relying on relevant documents if you file them late.

A number of points can be dealt with in arbitration, such as:

| the quality, price and delivery conditions of goods and services;

| the work performance;

| the promotion and distribution of merchandise;

| the use of patents, trademarks or Internet domain names;

| etc.

**Once the arbitration is over, you will receive an arbitration award. Apart from exceptional cases, the award is final and binding on the parties. On occasion, a party may wish to enforce an arbitration award. This can be done by asking the court to homologate the arbitrator's decision.**

## An example of business arbitration

Two business partners signed a non-compete clause that applies within a 5 km radius of the business they founded together.

One of two business partners resigns and wants to relocate 6.2 km away from the original business and believes that the non-compete perimeter does not apply to the new area. The other partner objects and considers that the 5 km non-compete perimeter as the crow flies covers the area of the former partner's new location.

The non-compete clause provided for an arbitration mechanism in the event of conflict. The arbitrator decides that the proposed new place of business is within the 5 km non-competition perimeter (as the crow flies). The new business will therefore have to open its doors in a different area than the one considered.

## 4. LMED-ARB: A COMBINATION OF MEDIATION AND ARBITRATION

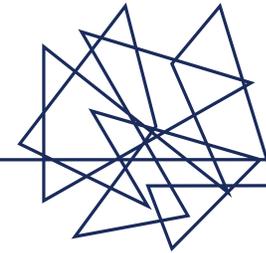
What is med-arb?



— The process: a neutral third party is both mediator and arbitrator

— Uses both methods: some issues involved in the conflict are resolved by mediation and, if necessary, other issues are by arbitration.

— Saves time: both processes occur sequentially before the same neutral third party.



Consider the following points to ensure that your med-arb goes smoothly. Adapt them to your situation because every conflict is different, every med-arb is different.

**Before med-arb:** choose your mediator carefully and establish clear rules for your med-arb.

— Confirm the med-arb and select the arbitrator: Med-arb requires the agreement of the parties who must choose the mediator-arbitrator together. They do so either in the event of a conflict or in advance in a contract that provides what happens in the event of a future conflict. At page 58 you will find an example of such a clause.

Establish clear rules for the transition between mediation and arbitration. Given that med-arb is an amalgamation of two conflict resolution methods, you must stipulate when mediation ends and arbitration begins.

**During med-arb:** As you work through the process, it is important to identify and confirm the issues that have been resolved through mediation. It is also important to identify the issues that will need to be resolved through arbitration.

## An example of business med-arb

For several reasons, a general contractor is dissatisfied with the work he delegated to a plumber (failure to respect deadlines, poor quality of work, etc.).

The parties submit their conflict to a third party who will act as both mediator and, if required, as arbitrator.

As a result of mediation, they successfully negotiated a settlement that addresses the contractor's dissatisfaction with the quality of the work and the fact that deadlines were not respected. The plumber will have to pay a penalty as compensation.

However, the general contractor and the plumber disagreed regarding post-mediation continuation of the work. The general contractor wants to use another plumber to finish the work, and the plumber wants to finish what he started and claims what he's owed.

Their contract provides that matters not settled by mediation are to be resolved by arbitration. Both parties ask the mediator turned arbitrator, to decide the issue and he decides that the plumber can finish the work, but he reduces the plumber's fees for the work to come.

# 7

**RESOLVING YOUR CONFLICT WITH AN  
APPROPRIATE METHOD**

There are several aspects to any conflict:

- the legal aspect;
- the emotional and relational aspect;
- the financial aspect.

All the above aspects can affect you and your business.

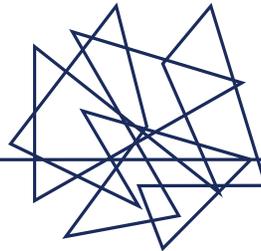
A conflict is never straightforward, because the above aspects interlock like a Russian doll. By reading through this guide, you've already taken a step back and considered each aspect separately.

Afterwards, you'll be able to decide which method is the best one for resolving your conflict. By then you'll know what's involved in each aspect and what your options are.

Each option, from negotiation to arbitration, by way of mediation and «med-arb», has its advantages and disadvantages.

Although litigation is always an option for resolving conflict, you should consider all your other options before taking your conflict to court.

The alternatives to litigation described in this guide can help you resolve your conflict without going to court. You would have greater control over the management of the conflict while saving time and money. It's worthwhile taking the time to consider them!



8



**RESOURCES**



# 1. TO FIND OUT MORE ABOUT CONFLICT RESOLUTION PROCESSES

## DEPARTMENT OF JUSTICE (CANADA):

<https://www.justice.gc.ca/eng/abt-apd/dprs-sprd/index.html>

## MINISTÈRE DE LA JUSTICE DU QUÉBEC:

<https://www.justice.gouv.qc.ca/en/your-disputes/dispute-prevention-and-resolution-dpr-processes/>

## INSTITUT DE MÉDIATION ET D'ARBITRAGE DU QUÉBEC:

<https://imaq.org/institute-of-mediation-and-arbitration-of-quebec-imaq/>

To find a certified mediator or arbitrator:

[https://mbr.adric.ca/IAMC/ADR\\_Connect/Trouver.aspx](https://mbr.adric.ca/IAMC/ADR_Connect/Trouver.aspx)

## ADR INSTITUTE OF CANADA:

<https://adric.ca/>

## CANADIAN COMMERCIAL ARBITRATION CENTRE:

<https://www.intracen.org/home/>

## ÉDUCALOI :

Éducaloi provides legal information in plain English on its website:

<https://educaloi.qc.ca/en/>

## 2. FOR ASSISTANCE IN YOUR CONFLICT RESOLUTION EFFORTS

### MINISTÈRE DE LA JUSTICE DU QUÉBEC:

There are mediation services in the small claims division for matters involving less than \$15,000:

<https://www.quebec.ca/en/justice-and-civil-status/small-claims/mediation-at-the-small-claims-division>

### THE BARREAU DU QUÉBEC:

To find a lawyer-mediator or a lawyer-arbitrator:

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

(check «Modes de résolution de conflicts» in «Domain»)

### THE CHAMBRE DES NOTAIRES:

To access legal information and find out how a notary can advise you at different stages in your marital or couple relationship, family situation, and professional life:

<https://www.cnq.org/en/>

To find a notary for legal advice:

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

### THE CENTRE DE MEDIATION ET D'ARBITRATION NOTARIAL:

To find a notary-mediator or a notary-arbitrator:

<https://mediationarbitrationnotarial.com/faire-une-demande/>

#### THE UNIVERSITÉ DE SHERBROOKE MEDIATION CLINIC:

For mediation services:

[https://www.usherbrooke.ca/clinique-mediation/fileadmin/sites/cliniquemediation/documents/Depliant\\_mediation\\_VA.pdf](https://www.usherbrooke.ca/clinique-mediation/fileadmin/sites/cliniquemediation/documents/Depliant_mediation_VA.pdf)

#### COMMUNITY JUSTICE CENTRES:

For legal information, legal assistance and direction to other legal resource:

<https://www.justicedeproximite.qc.ca/en/>

### 3. RESOURCES FOR SMALL AND MEDIUM-SIZED BUSINESSES

#### GARAGE LEGAL

Clinic affiliated with the Université de Montréal that supports start-up businesses:

<https://www.garagelegal.ca/>

#### COMPASS CLINIC STARTUP & LEGAL CLINIC

Affiliated with McGill University for «founders» and «startups»:

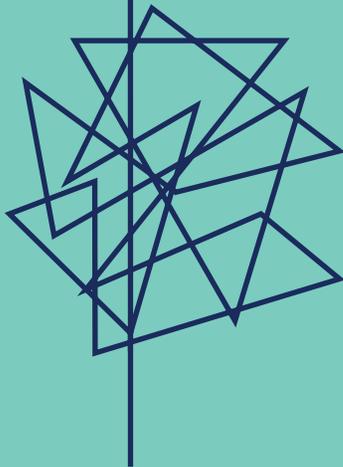
<http://www.compassclinic.org/>

#### PARLÉ

The Platform to Assist in the Resolution of Litigation Electronically:

For disputes between consumers and merchants:

<https://www.opc.gouv.qc.ca/en/opc/parle/description/>



# APPENDICES



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## MEDIATION CLAUSE

The parties agree that in the event of conflict related to this Contract, they will resort to mediation. The reason for the conflict may concern, but is not limited to, a clause in the Contract, its interpretation or its application.

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## MEDIATION - ARBITRATION (MED-ARB) CLAUSE

The parties agree that in the event of conflict related to this Contract, they will resort to mediation. The conflict may arise as a result of, but is not limited to, a clause in the Contract, its interpretation or its application.

If the conflict is not resolved, in whole or in part, further to mediation, the parties agree to resolve the conflict by arbitration in accordance with the laws in force in Québec. The parties may, by arbitration agreement, select the applicable procedural rules, failing which, the rules set forth in the Code of Civil procedure of Québec shall apply.

The parties agree that the decision rendered by the arbitrator (the arbitration award) is binding on the parties and is final and executory.

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## ARBITRATION CLAUSE

The parties agree that in the event of conflict related to this Contract, they shall resort to arbitration. The parties may, by arbitration agreement, select the applicable procedural rules, failing which, the rules set forth in the Code of Civil procedure of Québec shall apply.

The parties agree that the decision rendered by the arbitrator (the arbitration award) is binding on the parties and is final and executory.

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## CONFIDENTIALITY CLAUSE

The Parties and any other interested or concerned party, including, but not limited to, legal advisors, experts, employees, family members [hereinafter referred to «they»] undertake to participate in a \_\_\_\_\_ (insert: negotiation, mediation, arbitration or «med-arb») process.

They each undertake that the entire process and the content thereof are and shall remain confidential, including, but not limited to:

- data;
- information;
- discussions;
- proposals;
- discussions among themselves and if applicable with a third party (negotiator, mediator, arbitrator, mediator-arbitrator);
- procedural rules.

The Parties acknowledge that the entire process and content thereof may not be used as evidence in court.

The Parties further acknowledge that a third party, including but not limited to, a negotiator, mediator, arbitrator, mediator -arbitrator, may not be called to appear in court.

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# RESOLUTION CONCERNING REPRESENTATION

RESOLUTIONS OF THE BOARD OF DIRECTORS OF [INSERT THE NAME OF THE COMPANY]  
IT IS UNANIMOUSLY RESOLVED:

---

1

to mandate and appoint [name of person] to represent the company in resolution of the conflict between it and \_\_\_\_\_ by [give detail of the conflict resolution method selected and the applicable terms and conditions];

---

2

to do all acts necessary in the interests of the company, including, but not limited to: negotiate, represent the company in mediation, represent the company in arbitration, represent the company in med-arb [as required, make an exhaustive list of the representative's powers];

---

3

with the exception of paragraph (2), [name of person] may not [list the restrictions, limitations, etc. placed on the representative];

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4

place the following term limit on this resolution: this resolution is valid and effective as of [start date] and ceases to be valid and effective on [end date]

Made at [place], on [date]

# ABOUT US

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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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