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## AN ACT TO INSTITUTE, UNDER THE CODE OF CIVIL PROCEDURE, PRE-HEARING MEDIATION IN FAMILY LAW CASES AND TO AMEND OTHER PROVISIONS OF THE CODE (S.Q. 1997, C. 42)

On the 13th of June, the National Assembly passed without division Bill 65 entitled “*An Act to institute, under the Code of Civil Procedure, pre-hearing mediation in family law cases and to amend other provisions of the Code*”.

The Bill came into force on September 1, 1997. The principal purpose of the Bill is to require all spouses or former spouses, whether married or not, with one or more children, to attend an information session on the mediation process prior to the hearing of any application by the Court.

An overview of the contents of the Bill will be given in this bulletin and the members of our group would be pleased to provide you with further information.

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### **What are the principal objectives of the Bill?**

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From now on, whenever there is a dispute between two spouses or two former spouses, whether married or not, with one or more children, on any of the following matters:

- child custody;
- support due to the children;
- support due to one spouse;
- the family patrimony;
- other patrimonial rights arising from the marriage,

the spouses are required to attend at a **COMPULSORY information session** on the mediation process **PRIOR** to being heard by the Court. They are not prevented from instituting proceedings, provided that the information session has been held prior to the judge being seized with the matter.

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### **What type of information sessions are available?**

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Information sessions may be held in a group or privately.

Group information sessions are organized by the Family Mediation Service of the Superior Court in the judicial district of the parties. They are conducted in the presence of at least three persons by two mediators, one of whom is a legal adviser and the other, from another profession.

Private sessions are conducted by a mediator who has been selected by the parties.

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### **Who chooses the type of information session?**

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The parties select jointly the type of information session which is suitable for them.

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### **What if the parties disagree on the type of information session or the selection of a mediator?**

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Each party must attend a group session.

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### **What are the general contents of an information session?**

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Whether held on a group or private basis, the information session bears on the following matters:

- the nature of the mediation;

- the objectives aimed at;
- the mediation process;
- the role to be played by the parties and the mediator.

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### **What is the next step after the information session?**

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The parties may choose to enter into mediation or not, with one or more mediators of their choice.

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### **What if one party refuses to enter into mediation?**

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The mediator records this fact in his or her report and sends a copy to the parties. There will be no mediation if either party refuses to pursue the process.

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### **Who may attend at the mediation session?**

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Obviously, both parties and a mediator are present at the mediation session. Other persons may be present at the mediation session, provided that the parties agree and the mediator considers the presence of those persons to be desirable. Those persons may not be experts or legal advisers.

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### **May the parties seek advice from counsel during mediation?**

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The parties may, on their own initiative or at the suggestion of the mediator, suspend any session to seek advice from counsel or from any other person, according to the type of advice sought.

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### **May a party terminate the mediation process?**

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Either party may, at any time during mediation, terminate it without having to give reasons. The mediator must terminate mediation if he considers that to pursue it would be ill-advised.

In such cases, the mediator files his report with the Family Mediation Service of the Superior Court and sends a copy to the parties.

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### **May the parties request that certain rights be safeguarded during the period of mediation?**

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During the period of mediation, either party may, upon motion to the Court, apply for any appropriate order to safeguard his or her rights or that of the children during the period of mediation or during any other period it considers appropriate. For example, an order may deal with the use and occupancy of the family residence, the possession of the furnishings thereof and movable property therein, the granting of support to one of the spouses or former spouses, and the payment of housing expenses.

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### **May a party be exempted from attending the information session?**

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A party who has a valid reason not to attend the information session on the mediation process may state that fact to the mediator of his choice; the reason may relate, for instance, to the inequality of the power in the relationship, to the disability or the physical or psychological condition of the party or to the great distance between the party's residence and that of the other party.

In such a case, the mediator draws up a report containing an express statement of the facts, without disclosing the nature of

the reasons raised by the party; the mediator then files his report with the Family Mediation Service of the Superior Court.

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### **What happens if a party fails to attend the information session without being exempted from this requirement?**

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A party who was not exempted as mentioned above and fails to attend the information session on the mediation process may be condemned to all the costs relating to the application.

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### **For how long will the mediator's report remain valid?**

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The parties are required to attend at a single information session in the matter opposing them. For example, the parties who attended an information session in connection with their divorce or separation from bed and board are not required to attend a new session upon subsequent changes to their decree of divorce or judicial separation.

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### **Who pays for the costs of the mediation process?**

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The Family Mediation Service of the Superior Court pays the mediator's fees, up to the prescribed number of sessions, provided these fees are in keeping with the prescribed tariff; otherwise, the mediator's fees are borne and paid in full by the parties.

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### **What is the prescribed number of sessions?**

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The Service shall only pay such fees up to a maximum number of six sessions, whether or not an information session is held or a greater number of sessions is required. Where the mediator's services are provided in connection with an application for review of a judgment

rendered between the parties on the matters at issue, the maximum number of sessions is three. If the parties require additional sessions, they must bear the cost thereof.

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**What are the amounts paid by the government with respect to the mediator's fees?**

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The fees are \$95 for an information session on the mediation process other than a group session; \$125 per mediator for a group information session on the mediation process; 95 \$ for each additional mediation session, whether one or two mediators are present.

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**What is the duration of an information session?**

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The information session on the mediation process shall last approximately 75 minutes or, in the case of a group session, approximately 90 minutes.

The total time of mediation must correspond to an average duration of 75 minutes per mediation session.

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**What happens if an agreement is reached between the parties during the mediation?**

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The mediator's report together with the signed agreement is filed before the Court at the hearing. The Court will verify whether the agreement was entered into in good faith and whether it is in the best interests

of the children and then ratifies the agreement as the judgment in the court proceedings.

The Court may wish to summon and hear the parties.

*Élisabeth Pinard*

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The Family and Personal Law Group of the firm of Lavery, de Billy has its own team of mediators and offers personalized services to couples. Every mediator has received the professional training leading to the accreditation as mediator and has acquired vast practical experience in the resolution of conflicts by way of mediation and negotiation. In addition, all the members of this sector may act as independent legal advisers in connection with the mediation process.

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