

March 6, 2015

The Honourable Stéphanie Vallée
Minister of Justice
Édifce Louis-Philippe-Pigeon
1200, route de l'Église, 9^e étage
Québec (Québec) G1V 4M1

Subject: Draft regulation – Regulation to establish a pilot project on mandatory mediation for the recovery of small claims arising out of consumer contracts

Dear Minister Vallée:

Within the framework of its mandate, the Québec Ombudsman reviews all draft regulations published in the *Gazette officielle*. When it deems necessary, it intervenes under section 27.3 of its constituting act, which empowers it to call the attention of the government to legislative, regulatory or administrative reforms it deems to be in the public interest. I therefore analyzed the above draft regulation, published on January 28, 2015.

This draft regulation provides for the establishment of a pilot project on mandatory mediation in the judicial districts of Gatineau and Terrebonne for a period of three years for the recovery of small claims arising out of consumer contracts. Parties to a case for the recovery of small claims introduced in these districts during the three-year period must therefore participate in a mediation session before the case may be heard by the court.

This pilot project stems from the amendments in matters of civil procedure under the *Act to establish the new Code of Civil Procedure*, passed on February 21, 2014.¹ One of the goals of this reform is to “streamlin[e] and moderniz[e] not only the organization and language of the provisions but also the rules as to ... the recovery of small claims ... to cite but a few examples.”²

¹ 2014, c. 1 (CQLR, c. C-25.01).

² Explanatory Notes, *Act to establish the new Code of Civil Procedure*, 2014, c. 1

The Québec Ombudsman subscribes to this goal and welcomes the establishment of this pilot project. Mediation is an effective tool in keeping litigation out of the courts and in fostering genuine access to justice. A measure of this kind is such as to contribute to solving problems of lengthy waits, complex procedure and the legal fees paid by citizens.

More specifically, this pilot project should foster the settlement of disputes regarding consumer contracts effectively and within a reasonable time, while preventing cases from going to court unnecessarily. Merchants' and consumers' rights are preserved, which will encourage their participation in good faith, a condition crucial to successful mediation. I hope that the pilot project will indeed unclog small claims court, and, thus, reduce wait times.

In exercising its mandate, the Québec Ombudsman has witnessed time and again the difficulties that citizens experience because of these waits that are inherent to the legal system, and remains concerned. If the pilot project is likely to lessen these difficulties for private consumer disputes with merchants, government efforts to offer citizens alternative formats for preventing and settling disputes when they experience difficulties with the government must also continue.

Government of Québec agencies and corporations are frequently involved in legal action of various kinds pitting them against citizens and even other public agencies. In this capacity, they are parties within the meaning of the *Code of Civil Procedure* and are subject to the duties and obligations therein. The government has much more powerful means than citizens do and, in the context of legal proceedings, this imbalance puts citizens at a disadvantage. The government therefore is just as duty-bound, if not more so, to consider ways of preventing and settling disputes and to incite its institutions to avail themselves of these methods to avoid making disputes or grievances with citizens a court issue.

By virtue of its mission, the Québec Ombudsman is part of the system aimed at offering a non-judicial solution to those who feel they have been harmed in their dealings with government bodies, most of which fall within the Québec Ombudsman's jurisdiction. Daily, its action prevents grievances from becoming a matter for the courts. It therefore cannot but applaud any measure aimed at improving accessibility to justice. As a result, it will follow with interest the pilot project and its outcome, which I hope, will be made public.

Yours respectfully,

(ORIGINAL SIGNED)

Raymonde Saint-Germain
Ombudsperson

c.c.: Ms. Nathalie G. Drouin, Deputy Minister of Justice
Ms. Anik Laplante, Secretary, Committee on Institutions