



Case in Brief: **Association de médiation familiale du Québec v. Bouvier**

Judgment of December 17, 2021 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2021 SCC 54

The Supreme Court rules that communications during family mediation sessions may be used to prove the existence of a settlement agreement between the spouses.

This is a family law case from Quebec involving spouses who participated in family mediation to resolve the terms of their separation. In Quebec, family mediation by certified mediators is made available to married, civil union and common law spouses with or without children. This process is subsidized by the provincial government.

Ms. Isabelle Bisaillon and Mr. Michel Bouvier were common law spouses for more than three years. They had two children during that time. After their relationship ended, they participated in several family mediation sessions in 2012 with a certified mediator to resolve their disputes about the children's care, the family home and other matters. At the end of that process, the mediator prepared a document known as a "summary of mediated agreements" that explained how the parties had agreed to settle their disputes.

In 2014, Ms. Bisaillon filed a lawsuit in Quebec's Superior Court for more money than set out in the summary. Mr. Bouvier took the position they should stick to the terms of the contract agreed to in mediation, and set out in the summary. Ms. Bisaillon denied the existence of the contract and objected to the summary being admitted in evidence. She said the summary was protected by a rule of absolute confidentiality.

The Superior Court rejected Ms. Bisaillon's argument. In its reasons, the court relied on a commercial mediation case from 2014 called [Union Carbide Canada Inc. v. Bombardier Inc.](#) In that case, the Supreme Court acknowledged the confidentiality of the mediation process, but recognized the "settlement exception". This exception allows parties to a settlement to prove it exists. As such, the Superior Court found Ms. Bisaillon and Mr. Bouvier had a contract. Ms. Bisaillon appealed to Quebec's Court of Appeal, which also sided with Mr. Bouvier. While Ms. Bisaillon decided not to appeal that decision, Quebec's Association de médiation familiale was permitted to take Ms. Bisaillon's case to the Supreme Court.

The Supreme Court has sided with Mr. Bouvier.

The settlement exception also applies to family mediation cases.

Writing for the majority, Justice Nicholas Kasirer said the settlement exception outlined in *Union Carbide* may also apply to family mediation cases. He wrote, "It is certainly true that confidentiality is necessary in any mediation to allow for frank discussion between the parties in order to encourage settlements. It is also true that, unlike in the case of civil or commercial mediation, negotiations following the breakdown of a relationship often take place during a period of personal upheaval that may heighten the vulnerability of either spouse."

However, Justice Kasirer explained how the family mediation process includes other safeguards beyond confidentiality to assure the protection of vulnerable parties. These additional safeguards include a certified and impartial mediator chosen by the parties and a judge who confirms any agreement arising from the mediation.

Due to these important safeguards, a rule of absolute confidentiality is not required. This means people may use the settlement exception to prove the existence and terms of what they agreed to during mediation.

Breakdown of the decision: **Majority:** Justice [Kasirer](#) dismissed the appeal, holding that the settlement exception set out in [Union Carbide Canada Inc. v. Bombardier Inc.](#) was applicable, thereby allowing the disclosure of communications in order to prove the existence of the settlement arising from family mediation (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Côté](#), [Brown](#), [Rowe](#) agreed) | **Concurring:** Justice [Karakatsanis](#) dismissed the appeal as well but for different reasons (Justices [Abella](#) and [Martin](#) agreed).

More information (case # 39155): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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