

AMENDMENTS TO THE QUEBEC *CODE OF CIVIL PROCEDURE* TO SIMPLIFY PROCEDURE AND PROMOTE SETTLEMENTS

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On March 15, 2023, the National Assembly adopted the *Act to improve justice efficiency and accessibility, in particular by promoting mediation and arbitration and by simplifying civil procedure in the Court of Québec* [\[1\]](#) (the "**Act**"). The majority of the significant changes introduced by the Act came into force on June 30, 2023.

The main purpose of this act is to create a new procedure for cases brought before the Court of Quebec by substantially amending the *Code of Civil Procedure* ("**CCP**").

As its name suggests, its main goal is to make justice more accessible and to encourage out-of-court settlements, while reducing the backlog in courts.

A reduced and concurrent jurisdiction

The Court of Quebec now has exclusive jurisdiction over all disputes under \$75,000, as opposed to \$85,000 previously. It also has concurrent jurisdiction with the Superior Court for all disputes of a value between \$75,000 and \$100,000.

In these latter cases, the plaintiff can initiate proceedings in the court of their choosing. It remains to be seen how this practice will develop, and which court will be preferred by plaintiffs faced with such a choice.

Simplified proceedings in the Court of Quebec

The Act now provides for a radically revised procedure in the Court of Quebec. The parties no longer have to agree on a protocol for the proceedings, and no longer seem to be in control of their own procedure. From now on, the various deadlines and stages of the case will take place within the time limits set out in the CCP. The parties will announce their procedures, means of proof, etc. by notice to be filed with the court office. Judges will therefore play a more active role in case management.

The Act also imposes page limits on various procedures in the Court of Quebec: applications to institute proceedings, declarations of intervention and claims in warranty must not exceed 5 pages; the *content* of a written pre-trial examination must not exceed 3 pages; and the statements contained in the brief outline of the

arguments (the defense) must not exceed 2 pages.

Joint expert opinion: the rule for certain cases

Joint expert opinion is required for all cases with a value of less than \$50,000, unless otherwise authorized by the court. This change is in line with the trend initiated in 2016 by the legislator and followed by several judges who have not hesitated to encourage or order parties to seek a joint expert opinion.

Limits on pre-trial examinations

Pre-trial oral examinations are only possible in cases worth less than \$50,000, as opposed to \$30,000 today. As for cases over \$50,000, each party will be allowed only one oral examination, unless otherwise authorized by the court.

The rule limiting the number of pages of a written examination is a clear indication of the legislator's intention to limit the examination process, which can be a source of delay in proceedings.

Incentives to encourage out-of-court settlements

The Act reintroduces a tool that had been introduced to the CCP as part of the 2014 reform: the pre-court protocol. The purpose of the pre-court protocol is to encourage the exchange of information between the parties in order to assess the merits of their case and therefore to promote the settlement of disputes.

The legislative changes of 2023 tend to revalorize this option for all parties. As such, they have a means of obtaining relevant information, outside of the procedural rules governing the proceedings, which can then be added to the court file with their consent. In addition, the Act provides that cases that have gone through mediation or used a pre-court protocol will be heard at trial in priority to other cases.

Conclusion

In short, the Act introduces significant changes to proceedings instituted before the Court of Quebec. Although many of these changes will primarily have an impact on lawyers, who will have to adapt to the new management of their files, they will undoubtedly generate new considerations for the parties, particularly regarding the possibility of presenting a full and complete defense in a context where the rights to explore the opponent's file are limited.

Moreover, there will certainly be strategic considerations for any plaintiff whose case is worth between \$75,000 and \$100,000. The plaintiff will have to consider the procedural means available to the parties before the Superior Court and the Court of Quebec, as well as the delays and time required to obtain a trial date in each court, given the backlog in courts.

Similarly, the introduction of incentives to resort to out-of-court settlement methods, such as the possibility of skipping the line to trial, could play a role in the decision of plaintiffs wishing to initiate legal proceedings.

[1] Bill 8, *An Act to improve justice efficiency and accessibility, in particular by promoting mediation and arbitration and by simplifying civil procedure in the Court of Québec*, 1st Sess, 43rd Leg, Quebec, 2023 (assented to 15 March 2023), SQ 2023, c 3.

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A Cautionary Note

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