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Quebec's New Code of Civil Procedure

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Quebec's new Code of Civil Procedure came into force on January 1, 2016 (the "**Code**"). The Code is the culmination of widespread reform initiated 15 years ago by the Quebec government, and brings many significant innovations in how civil litigation is conducted. Of particular note is the Code's emphasis on alternative methods of dispute resolution.

The Code's very first Article provides that "[p]arties must consider private prevention and resolution processes before referring their dispute to the courts." If a matter gets to court, the parties have to establish a "case protocol" under Article 148, which includes indicating "the consideration given to private dispute prevention and resolution processes."

Book VII of the Code is entitled "Private Dispute Prevention and Resolution Processes" with titles on mediation (Articles 605 to 619) and arbitration (Article 620 to 655). Under the previous Code, mediation was only addressed in the context of family law proceedings and small claims actions. Article 605 outlines the role of the mediator as helping the parties "to engage in dialogue, clarify their views, define the issues in dispute, identify their needs and interests, explore solutions and reach, if possible, a mutually satisfactory agreement." Article 606 further provides that the mediator and mediation participants cannot be compelled to disclose anything they hear or learn in the course of the mediation process. In order to claim non-compellability, the mediator "must be certified by a body recognized by the Minister of Justice" and be "subject to the rules of professional conduct and be required to take out civil liability insurance or provide some other form of security to cover injury to third persons." Article 614 states that a party can "withdraw from or put an end to the mediation process at any time at any time at its own discretion and without being required to give reasons."

With respect to arbitration, the Code carries over most of the provisions from its predecessor with some notable changes. The most significant changes likely relate to the rules regarding "interim" or "exceptional measures." The rules of the previous Code of Civil Procedure gave rise to inconsistent case law on the ability of tribunals seated in Quebec to order interim measures. Articles 638 to 641 now expressly spell out an arbitrator's authority, at a party's request, to "take any provisional measure or any measure to safeguard" a party's rights, which can be enforced by Quebec courts, if necessary, and can be requested on an *ex parte* basis in urgent situations.

The Code provides for a more simplified default procedure for domestic arbitrations where the parties have not agreed to a procedure in advance. The default procedure envisions the proceedings being conducted orally by a sole arbitrator, with the parties' choice to provide written submissions. Article 636 provides that decisions are to be

made “immediately” during arbitration proceedings or as soon as possible thereafter, and do not have to be in writing. Arbitration awards, however, must be made in writing and within three months after the matter is taken under advisement, unless the parties agree to an extension, and must provide reasons.
Article 649 maintains the distinction between domestic and international commercial arbitrations. Similar to its predecessor, the Code does not formally adopt the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (“**Model Law**”), though states consideration may be given to the Model Law and its amendments in interpreting the Code if the arbitration involves “international trade interests, including interprovincial trade interests.”

Regarding the recognition and enforcement, or “homologation”, of arbitration awards, the Code maintains the grounds for refusal provided under the Convention for the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”) and Model Law. There were concerns among practitioners during drafting that the Code would introduce additional grounds for Quebec courts to refuse recognition and enforcement of an arbitration award, though the Code ultimately stayed in line with international standards.

A last notable change in the Code’s rules on arbitration relates to one of the cornerstones of arbitration, party autonomy. While the Code allows parties to agree to their own arbitration procedure, Article 622 provides that the parties cannot contract out of certain provisions of the Code “that determine the jurisdiction of the court or from those relating to the application of the adversarial principle or the principle of proportionality, to the right to receive notification of a document or to the homologation or the annulment of an arbitration award.”

Article 622 would thus seem to prohibit parties from limiting challenges to arbitration awards by way of prior agreement, which seems to be a growing issue before Ontario courts (see the author’s article “One more hurdle to annulments” published in the February 12, 2016 edition of The Lawyers Weekly).

The Code’s implementation is still at very early stages, but it will be interesting to see whether the Code’s emphasis on alternate methods of dispute resolution will help ease the burden on Quebec courts and ultimately improve access to justice. Nonetheless, the Code represents an ambitious overhaul and modernization of Quebec’s rules of civil procedure.

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