

Bill n°28

An Act to establish the new Code of Civil Procedure (excerpts)

EXPLANATORY NOTES

The purpose of this bill is to establish the new Code of Civil Procedure, whose main objectives are to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, the exercise of the parties' rights in a spirit of co-operation and balance, and respect for those involved in the administration of justice.

This bill is geared to achieving and upholding these goals, in particular by streamlining and modernizing not only the organization and language of the provisions but also the rules as to the form, presentation and notification of pleadings, the institution of proceedings before the courts, the revocation of judgments, the recovery of small claims and the execution of judgments, to cite but a few examples;

— affirming the existence of private, voluntary dispute prevention and resolution processes, and encouraging potential litigants to consider these processes before turning to the courts and to cooperate actively in searching for a solution and, if applicable, in preparing and applying a pre-court protocol;

(...)

Bill 28

AN ACT TO ESTABLISH THE NEW CODE OF CIVIL PROCEDURE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PRELIMINARY PROVISION

This Code establishes the principles of civil justice and, together with the Civil Code and in harmony with the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs procedure applicable to private dispute prevention and resolution processes when not otherwise determined by the parties, procedure before the courts as well as procedure for the execution of judgments and for judicial sales.

This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role. It is also designed to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, the exercise of the parties' rights in a spirit of co-operation and balance, and respect for those involved in the administration of justice.

This Code must be interpreted and applied as a whole, in the civil law tradition. Its rules must be interpreted in light of the special provisions it contains and those contained in other laws. In the matters it addresses, this Code supplements the silence of other laws if circumstances permit.

BOOK I

GENERAL FRAMEWORK OF CIVIL PROCEDURE

TITLE I

PRINCIPLES OF PROCEDURE APPLICABLE TO PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES

1. To prevent a potential dispute or resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process.

The main private dispute prevention and resolution processes are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them. The parties may also resort to any other process that suits them and that they consider appropriate, whether or not it borrows from negotiation, mediation or arbitration.

Parties must consider private prevention and resolution processes before referring their dispute to the courts.

2. Parties who enter into a private dispute prevention and resolution process do so voluntarily. They are required to participate in the process in good faith, to be transparent with each other, including as regards the information in their possession, and to co-operate actively in searching for a solution and, if applicable, in preparing and implementing a pre-court protocol.

They must, as must any third person assisting them, ensure that any steps they take are proportionate, in terms of the cost and time involved, to the nature and complexity of the dispute.

3. The third person called upon by the parties to assist them in the process they have opted for or to decide their dispute must be chosen by them jointly.

The third person must be capable of acting impartially and diligently and in accordance with the requirements of good faith. If acting on a volunteer basis or for a disinterested motive, the third person incurs no liability other than that incurred through an intentional or gross fault.

4. Parties who opt for a private dispute prevention and resolution process and the third person assisting them undertake to preserve the confidentiality of anything said, written or done during the process, subject to any agreement between them on the subject, to any special provisions of the law or to their own remedies before the courts.

5. The third person called upon to assist the parties may provide information for research or statistical purposes or in connection with a general evaluation of the dispute prevention and resolution process or its results without it being a breach of the person's duty of confidentiality, provided no personal information is revealed.

6. Parties who agree to resort to a private dispute prevention and resolution process, together with the third person involved in the process, if any, determine the procedure applicable to the process they have selected. If the parties have opted for mediation or arbitration or a similar process and the procedure they have determined must be supplemented, the rules of Book VII apply.

7. Participation in a private dispute prevention and resolution process other than arbitration does not entail a waiver of the right to act before the courts. However, the parties may undertake not to exercise that right in connection with the dispute in the course of the process, unless it proves necessary for the preservation of their rights.

They may also agree to waive prescription already acquired and the benefit of time elapsed for prescription purposes or agree, in a signed document, to suspend prescription for the duration of the process. Prescription cannot, however, be suspended for more than two months.

(...)

BOOK VII

PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES

TITLE I

MEDIATION

CHAPTER I

ROLES AND DUTIES OF PARTIES AND MEDIATOR

605. A mediator is chosen, directly or through a third person, by mutual agreement of the parties.

The mediator assists the parties in defining the issues in dispute, identifying their needs and interests, engaging in dialogue and exploring solutions in order to reach a mutually satisfactory agreement. The parties may ask the mediator to develop with them a proposal to prevent or resolve the dispute.

The mediator is required to disclose any conflict of interest or any situation that may be seen to create a conflict of interest or that may cast doubt on the mediator's impartiality.

606. The mediator and mediation participants cannot be compelled, in arbitration, administrative or judicial proceedings, whether related or unrelated to the dispute, to disclose anything they hear or learn in the course of the mediation process. Nor can the mediator and mediation participants be compelled to produce a document prepared or obtained in the course of the mediation process, unless the law requires its disclosure, a person's life, safety or personal integrity is at stake or its disclosure is necessary for the mediator to be able to defend against a claim of professional misconduct. No information given or statement made in the course of the mediation process may be admitted in evidence in such proceedings.

To claim the privilege of non-compellability, the mediator must be certified by a body recognized by the Minister of Justice. In addition, the mediator must be subject to 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.

607. Despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and the Act respecting the protection of personal information in the private sector (chapter P-39.1), no one has a right of access to a document contained in the mediation record, or the right to object to the use of a document in the course of a mediation process on the grounds that it may contain personal information.

CHAPTER II

CONDUCT OF MEDIATION

608. Mediation begins, without formality, on the day on which the parties agree to enter into a mediation process by mutual agreement or at the initiative of one of them. In the latter case, failure by the other party to respond constitutes a refusal to participate in the mediation process.

609. Before starting the mediation process, the mediator informs the parties of a mediator's role and duties, and determines with them the rules applicable to and the length of the mediation process.

The parties must undertake to attend all meetings to which they are convened by the mediator. They may, if all consent, even tacitly, bring persons whose contribution may be helpful in resolving the dispute. The parties are required to ensure that the persons who have the authority to make a settlement agreement are present or that they can be reached in sufficient time to give their consent.

610. The mediator has a duty to treat the parties fairly, and must see that each party has an opportunity to argue its case.

If the mediator finds that a serious inequality exists between the parties or that a party is engaging in intimidation or manipulation, the mediator draws the parties' attention to that situation and, with the parties, determines measures to remedy it. If the mediator considers that a proposed settlement agreement is likely to lead to a dispute in the future or cause serious prejudice to one of the parties, the mediator invites the parties to remedy the situation and, if necessary, to seek advice from a third person.

The mediator may suspend the mediation process at any time, in the interests of the parties.

611. The mediator may communicate with each party separately, but in that case is required to inform the parties.

No information relevant to the mediation received from a party may be disclosed by the mediator, without that party's consent, to the other party.

612. If the parties enter into mediation while a judicial demand is already in progress, they must agree to a stay of the proceeding, if possible and if the law or the court seized permits it, until the end of the mediation process.

CHAPTER III

END OF MEDIATION

613. A settlement agreement contains the undertakings of the parties and terminates the dispute. The settlement agreement constitutes a transaction only if the subject matter and the circumstances permit and the parties' wishes in that respect are clear.

614. A party may withdraw from or put an end to the mediation process at any time at its own discretion and without being required to give reasons. As well, the mediator, if convinced that the mediation process is doomed to failure or is likely, if continued, to cause serious prejudice to one of the parties, may put an end to it.

615. As soon as the mediation process ends, the mediator renders an account to the parties of the sums received and determines the costs, which are borne equally by the parties, unless a different apportionment has been agreed, or has been ordered by the court if the mediation process took place in the course of a proceeding.

The costs include the mediator's fee, travel expenses and other disbursements, as well as any costs related to expert evidence or other interventions agreed by the parties. All other expenses incurred by a party are borne by that party.