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## ON JANUARY 1, 1997, JUSTICE WILL BE SWIFTER

In June of this year, the National Assembly of Québec adopted Bill 7 amending the Code of Civil Procedure and other legislative provisions.

The primary goal of this Bill is to establish a more rapid structure for processing judicial claims. It is estimated that this procedure could govern 80% of civil trials. The procedure is decidedly more favourable to plaintiffs.

The time limits set out in the procedure are not only short but also imperative: it is therefore essential that these files be given top priority and managed with diligence, in order to prevent parties from losing their rights.

Other modifications relate to particular recourses, including, for example, motions in suits for slander, claims relating to lease obligations and split proceedings and seizure before judgment proceedings.

We invite you to contact us should you require additional information or explanations on the new procedure.

### THE SIMPLIFIED PROCEDURE ("FAST-TRACK")

Except where otherwise prescribed, the following claims are governed by the simplified procedure :

- any claim equal to or less than \$50,000.00, excluding the interests accrued and the additional indemnity;
- any claim, irrespective of the amount involved, relating to :

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- the sale price of moveable property;
- the price in a contract for services or of enterprise;
  - however, where the contract pertains to an immoveable, the \$50,000.00 limit shall apply.
- the price in a contract of leasing;
- the price in a contract of carriage;
- claims related to:
  - a contract of employment;
  - a contract of deposit;
  - a contract of loan money;
  - bills of exchange, cheques, promissory notes or acknowledgments of debt.
- the remuneration of a mandatary, a surety or an office holder;
- taxes, rates and assessments imposed by any law of Québec.
- there is a high risk that continuing proceedings according to the simplified procedure would cause serious injury to one of the parties.

Exclusion from the simplified procedure is therefore the exception rather than the rule.

It is important to note that, contrary to the ordinary procedure, all copies of exhibits, including expert reports, must be attached to the Declaration and served to the defendant.

A series of special rules then apply to delays and to the production of exhibits.

- Time limits are computed from the date of service of the Declaration.
- All preliminary procedures, such as motions for particulars and motions to call in warranty, must be presented together in a single motion. It will not be possible to multiply consecutive motions with a view to obtaining additional time, nor will it be possible to postpone the service of a motion for lack of sufficient information for its preparation.
- The Defense must be filed within **10** days. The defendant who fails to plead may be released of his or her default during a maximum period of **90** days: however, the extension thereby gained in no way postpones the fateful date of **180** days for the inscription for proof and hearing of the case.

The parties may not by mere consent avoid the rules of the simplified procedure. In order to be excluded, one or the other party must address their request to the Court. The granting of the motion is within the Court's discretion and is subject to the following conditions:

- the complexity of the matter warrants continuing according to the ordinary procedure;
- special circumstances warrant proceeding according to the ordinary procedure;
- All special proceedings relating to the production of evidence must take place within the time limit of **180** days from service. These include, for example, examinations on discovery, summons for a medical examination, requests for communication of a hospital file and calls to admit the

genuineness of exhibits. Such procedures are no longer available after the expiry of the **180** days.

- Inscription for proof and hearing must also be effected within the **180** days; otherwise, the plaintiff is deemed to have discontinued his or her suit, except where he or she shows that it was impossible to act.
- Cases governed by the simplified procedure are inscribed on a special roll and a date for proof and hearing is fixed as rapidly as possible, subject to the minimum notice of **30** days to the parties.
- The judge must render his or her judgment within **4** months after the hearing.
- The government has reserved the right to establish costs other than those presently in force for these judicial claims, although it has not yet done so. These costs will most likely be less than those presently prescribed in the Tariff.

### Comments

Given that the time limits are extremely short, it is to be expected that plaintiffs will prepare their case in advance and will institute proceedings only when the necessary exhibits and expert reports have been assembled and prepared. Such a course of action is likely to place defendants in a difficult position: given that the possibilities for exclusion are limited, defendants will be obliged to prepare their case rapidly and under the pressure created by these delays.

It is also possible that certain plaintiffs will reduce their claim to \$50,000.00 in order to benefit from the simplified procedure. This phenomenon is common in Small

Claims Division where plaintiffs regularly reduce their claim to \$3,000.00 in order to obtain the advantages of that regime.

Circumstances which are likely to result in legal action must be reported immediately and an investigation, be it elementary, must be completed in order to identify possible witnesses and collect factual elements.

There is no longer a "writ" and claims governed by the simplified procedure must be identified as such in the title of the Declaration. It is therefore imperative that any person sued in this matter immediately advise his or her attorneys in order to set off the preparation of the defense and insure that the necessary evidence is prepared and filed in due time. Any delay could put the defendant's rights at risk.

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## OTHER AMENDMENTS

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### Proceedings by way of motion

The Code of Civil Procedure already provides that certain types of claims may be instituted by way of a motion. This procedure is governed by different rules and the motion is generally heard upon its presentation. Proof consists primarily of affidavits, which excuses witnesses from appearing in Court, but requires a more lengthy written preparation.

As of January 1, 1997, the following claims, among others, will also be instituted by motion:

- any suit for slander;
- any claim relating to the rights and obligations under a lease;
- any claim relating to divided co-ownership of an immovable;

- proceeding to quash by-laws, resolutions or other proceedings under the *Municipal Code* or the *Cities and Towns Act*.

### **Split proceedings**

In matters of civil liability, it will be possible, by way of exception, to ask the Court to determine liability first and then only proceed with the determination of the quantum of damages. This rule applies equally to contractual and extra-contractual recourses.

The Court may take into account, in particular, the relative complexity of the proof with respect to liability and the quantum of damages. In fact, where proof of damages is extremely complicated, it will no doubt be possible to apply for split proceedings in order to avoid the costs associated thereto should there be a determination of no liability.

No appeal lies from the judgment authorizing or refusing split proceedings.

The first judgment on liability may be appealed only where it concludes that there is no liability. Otherwise, only the final judgment with respect to damages may be appealed and it will then be possible to contest both judgments.

### **Quashing a seizure before judgment**

The contestation of a seizure by reason of the insufficiency of the affidavit containing the grounds of the seizing party may be presented to a judge acting in chambers. He or she may quash the seizure at this stage or refer the motion to the Court which will decide as to the veracity of the facts set out in the affidavit.

Where the judge does not quash the seizure at this preliminary stage, he or she retains the power to quash it in part, for example by reducing the amount seized, or may make any other useful order for

safeguarding the rights of the parties, including accepting a deposit as security for costs.

### **Sale under judicial authority**

The provisions relating to the preparation of the scheme of collocation for the distribution of the proceeds of a sale under judicial authority have been modified in order to introduce greater precision and flexibility.

### **Miscellaneous**

Among the other new provisions some which considerably limit the right of appeal from a decision of the Régie du logement and offers establish a procedure for revocation of a judgment in Small Claims Division. Finally, a procedure is established which will allow parties, in urgent matters, to obtain judgments and orders by phone or fac-simile in districts where a judge is not always available.

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