

NATIONAL ASSEMBLY
Thirty-third Legislature, first session

1987, chapter 81

**AN ACT TO AMEND THE ACT RESPECTING
THE MINISTÈRE DU REVENU WITH RESPECT
TO SUMMARY APPEALS**

Bill 95

Introduced by Mr Yves Séguin, Minister of Revenue

Introduced 12 November 1987

Passage in principle 3 December 1987

Passage 14 December 1987

Assented to 17 December 1987

Coming into force: 17 December 1987

Act amended:

Act respecting the Ministère du Revenu (R.S.Q., chapter M-31)



Éditeur officiel
Québec



CHAPTER 81

An Act to amend the Act respecting the Ministère du Revenu with respect to summary appeals

[Assented to 17 December 1987]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. M-31,
s. 93.2,
replaced

1. Section 93.2 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is replaced by the following sections:

Small
claims divi-
sion

“93.2 An individual may bring a summary appeal before the small claims division of the Provincial Court instead of instituting any other action before the Provincial Court, where the subject of the summary appeal is

(a) in the case of the application, for a taxation year, of Part I of the Taxation Act (R.S.Q., chapter I-3),

i. a reduction in computing the income or taxable income not exceeding \$10 000 and not arising from a loss incurred during the year or in any other taxation year, the amount of which exceeds \$10 000, or

ii. a reduction in the tax computed under Book V not exceeding \$3 000 and not arising from a loss described in subparagraph i;

(b) an assessment relating to duties under any Act referred to in the second paragraph of section 95, not exceeding \$3 000;

(c) an allocation under the first paragraph of section 31 not exceeding \$1 000;

(d) exclusively the determination of interest or penalties not exceeding \$1 000.

Summary
appeal

"93.2.1 A summary appeal is brought in the chief place either of the district in which the individual resides or of the district of Montréal or Québec.

Resident
of the
Îles-de-la-
Madeleine

Notwithstanding the foregoing, an individual residing in the Îles-de-la-Madeleine archipelago, as described in subparagraph *b* of the first paragraph of paragraph 9 of section 9 of the Territorial Division Act (R.S.Q., chapter D-11), may bring a summary appeal at the court house in Havre Aubert."

c. M-31,
s. 93.3,
repealed

2. Section 93.3 of the said Act is repealed.

c. M-31,
s. 93.5,
replaced

3. Section 93.5 of the said Act is replaced by the following section:

Applicability

"93.5 This chapter does not apply to an individual who is bound, as a mandatary of the Minister, to deduct, withhold or collect an amount under any other fiscal law than those referred to in the second paragraph of section 95."

c. M-31,
s. 93.10,
repealed

4. Section 93.10 of the said Act is repealed.

c. M-31,
s. 93.16,
repealed

5. Section 93.16 of the said Act is repealed.

c. M-31,
s. 93.16.1,
added

6. The said Act is amended by inserting, before section 93.17, the following section:

Witnesses

"93.16.1 The clerk may, at the request of a party, summon the witnesses whom the party indicates.

Writ of sub-
poena

The parties and witnesses may be summoned by a writ of *subpoena* served by registered or certified mail, with an acknowledgement of receipt or a notice of delivery."

c. M-31,
ss. 93.20,
93.21,
repealed

7. Sections 93.20 and 93.21 of the said Act are repealed.

c. M-31,
ss. 93.22-
93.35,
added

8. The said Act is amended by inserting, before Chapter V, the following:

"DIVISION III

"HEARING

Date and
time of
hearing

"93.22 In all cases where a hearing is necessary, the clerk, as far as it is possible for him to do so, orders that the hearing be held on a date and at a time when the parties and their witnesses can be present without unduly disrupting their regular occupations.

- Procedure “**93.23** At the time fixed for the hearing, the clerk calls the case and ascertains whether the parties are present or absent, and the judge renders judgment according to the proof made.
- Rules of evidence “**93.24** The judge must follow the rules of evidence and summarily instruct the parties thereon; he proceeds according to the procedure which seems best to him.
- Allegations and witnesses “**93.25** Each party states his allegations and presents his witnesses.
- Judge “**93.26** The judge, who himself examines and cross-examines, gives equitable and impartial assistance to each party so as to render effective the substantive law and to ensure that it is carried out.
- Experts “**93.27** The judge may, of his own motion, if of opinion that the ends of justice will be better attained, order that any fact relating to the case be investigated and determined by experts whom he designates.
- Experts The procedure applicable to the experts is that determined by the judge.
- Costs The costs of the experts are charged to the losing party or to the Minister of Justice, at the discretion of the judge who has heard the case.
- Expert testimony “**93.28** No expert testimony may be heard except as provided in section 93.27.

“DIVISION IV

“JUDGMENT

- Powers of the court “**93.29** The tribunal may deny the summary appeal or quash, vary or refer to the Minister for re-examination, an assessment, decision, determination or allocation of payment.
- Restriction Notwithstanding the foregoing, the tribunal shall not quash or vary an assessment, a decision or a determination solely by reason of an irregularity, a defect of form, an omission or an error by any person whatever in observing a non-mandatory provision.
- Written judgment “**93.30** The judgment is recorded in writing over the signature of the judge who has rendered it.
- Content It must contain, in addition to the conclusions, a summary of the reasons upon which it is founded.

- Copies “**93.31** Unless judgment is rendered in open court in the presence of the parties, the clerk serves a copy of the judgment upon each party by registered or certified mail.
- Certified copy The copy of the judgment is certified by the clerk and the original is kept in the office of the court.
- Judgment final “**93.32** The judgment is final and without appeal.
- “*res judicata*” “**93.33** The judgment has the authority of a final judgment (*res judicata*) only with respect to the parties to the suit.
- Restriction The judgment cannot be invoked in any other summary appeal or in any appeal under section 95 or 1066 of the Taxation Act (R.S.Q., chapter I-3); the tribunal must, upon the application of a party or of its own initiative, dismiss every application or proof based on such judgment.

“DIVISION V

“COSTS

- Costs “**93.34** The judgment disposing of the motion adjudicates as to the costs, those of the witnesses, and, subject to section 93.27, those of the experts. The costs of the witnesses cannot exceed those fixed in the tariff under article 321 of the Code of Civil Procedure (R.S.Q., chapter C-25).
- Taxation Only those witnesses whom the judge indicates are entitled to taxation.
- Maximum costs “**93.35** Condemnation to costs cannot exceed the amount of the costs provided in section 93.13 and the costs of witnesses and experts established under section 93.34.”
- Coming into force **9.** This Act comes into force on 17 December 1987.