



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 91

**An Act to amend the Civil Code
and the Code of Civil Procedure
in respect of arbitration**

Introduction

**Introduced by
Mr Herbert Marx
Minister of Justice**

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EXPLANATORY NOTES

This bill amends the Civil Code and the Code of Civil Procedure as they regard arbitration.

The Civil Code is amended in order, specifically, to define “arbitration agreement”, to indicate what matters are not subject to arbitration and to provide that an arbitration agreement must be evidenced in writing.

The Code of Civil Procedure is amended in order to replace its existing provisions on arbitration (articles 940 to 951) by new provisions, which set down rules on the appointment, recusation, termination and competence of arbitators, the order of arbitration proceedings, the arbitration award, the homologation or annulment of an award, and a procedure of recognition and execution by the Québec courts of arbitration awards made outside Québec.

Bill 91

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Civil Code of Lower Canada is amended by inserting, after article 1926, the following title:

“TITLE THIRTEENTH A

“OF ARBITRATION AGREEMENTS

“**1926.1** An arbitration agreement is a contract by which the parties undertake to submit a present or future dispute to decision by one or more arbitrators other than the courts.

“**1926.2** Disputes over the status or capacity of persons, family matters or questions of public order cannot be submitted to arbitration.

An arbitration agreement cannot be opposed on the ground that the rules applicable to settlement of the dispute are in the nature of rules of public order.

“**1926.3** An arbitration agreement must be evidenced in writing; it is deemed to be evidenced in writing if it is contained in an exchange of communications which attest to its existence or in an exchange of proceedings in which its existence is alleged by one party and not contested by the other.

“1926.4 A stipulation which places one party in a privileged position with respect to the designation of the arbitrators is inoperative.

“1926.5 An arbitration agreement contained in a contract is considered to be an agreement separate from the other clauses of the contract and the finding by the arbitrators that the contract is null does not entail the nullity of the arbitration agreement by operation of law.

“1926.6 Subject to the peremptory provisions of law, the procedure of arbitration is governed by the contract or, failing that, by the Code of Civil Procedure.”

2. Book VII of the Code of Civil Procedure (R.S.Q., chapter C-25), comprising articles 940 to 951, is replaced by the following Book:

“BOOK VII

“ARBITRATIONS

“TITLE I

“ARBITRATION PROCEEDINGS

“CHAPTER I

“GENERAL PROVISIONS

“940. The provisions of this Title apply to an arbitration where the parties have not made stipulations to the contrary. However, articles 940.2, 941.3, 942.6, 943.2, 945.1 and 946 to 947.4, as well as article 940.5 where the object of the service is a judicial proceeding, are peremptory.

“940.1 Where an action is brought regarding a dispute in a matter on which the parties have an arbitration agreement, the court shall refer them to arbitration on the application of either of them unless the case has been inscribed on the roll or it finds the agreement null.

The arbitration proceedings may nevertheless be commenced or pursued and an award made at any time before the court decides the case.

“940.2 Except in the case of article 940.1 or matters under the exclusive jurisdiction of the Superior Court, the court or judge referred to in this Title is the court or judge having jurisdiction to decide the matter in dispute submitted to the arbitrators.

“940.3 A judge or the court cannot intervene in any question governed by this Title except in the cases provided for therein.

“940.4 A judge or the court may grant provisional measures before or during arbitration proceedings on the motion of one of the parties.

“940.5 The service of documents shall be made in accordance with this Code.

“CHAPTER II

“APPOINTMENT OF ARBITRATORS

“941. There shall be three arbitrators. Each party shall appoint one arbitrator, and the two so appointed shall appoint the third.

“941.1 If one of the parties fails to appoint an arbitrator within thirty days after having been notified by the other party to do so, or if the arbitrators fail to concur on the choice of the third arbitrator within thirty days after their appointment, a judge shall make the appointment on the motion of one of the parties.

“941.2 If the procedure of appointment contained in the arbitration agreement proves difficult to put into practice, a judge may on the motion of one of the parties take any necessary measure to bring about the appointment.

“941.3 The decision of the judge under articles 941.1 and 941.2 is final and without appeal.

“CHAPTER III

“INCIDENTAL CESSATION OF ARBITRATOR'S APPOINTMENT

“942. In addition to the grounds set forth in articles 234 and 235, an arbitrator may be recused if he does not have the qualifications agreed by the parties.

“942.1 An arbitrator must declare to the parties any ground of recusation to which he is liable.

“942.2 The party having appointed an arbitrator may propose his recusation only on a ground of recusation which has arisen or been discovered since the appointment.

“942.3 The party proposing recusation shall make a written statement of his reasons to the arbitrators within fifteen days after learning of the appointment of all the arbitrators or of a ground of recusation.

If the arbitrator whose recusation is proposed does not withdraw or the other party does not accept the recusation, the other arbitrators shall come to a decision on the matter.

“942.4 If the recusation cannot be obtained under article 942.3, a party may within thirty days of being so advised apply to a judge to decide the matter.

The arbitrators, including the arbitrator whose recusation is proposed, may continue the arbitration proceedings and make their award so long as the judge does not decide.

“942.5 If an arbitrator is unable to perform his duties or fails to perform them in reasonable time, a party may apply to a judge to have his appointment revoked.

“942.6 The judge’s decision on the matter of recusation or revocation of appointment is final and without appeal.

“942.7 The prescribed procedure for the appointment of an arbitrator applies for his replacement.

“CHAPTER IV

“COMPETENCE OF ARBITRATORS

“943. The arbitrators may decide the matter of their own competence.

“943.1 If the arbitrators declare themselves competent during the arbitration proceedings, a party may within thirty days of being notified thereof apply to the court for a decision on that matter.

Until the court decides, the arbitrators may pursue the arbitration proceedings and make their award.

“943.2 A decision of the court during the arbitration proceedings recognizing the competence of the arbitrators is deemed to be an interlocutory decision. If matters of extraprovincial trade are at issue in the arbitration, the decision is final and without appeal.

“CHAPTER V

“ORDER OF ARBITRATION PROCEEDINGS

“944. A party intending to submit a dispute to arbitration must notify the other party of his intention, specifying the matter in dispute.

“944.1 Subject to this Title, the arbitrators shall proceed to the arbitration according to the procedure they determine. They have all the necessary powers for the exercise of their jurisdiction, including the power to appoint an expert.

“944.2 The arbitrators may require each of the parties to produce a statement of his claims with the supporting documents within an allotted time.

Each of the parties shall transmit a copy of the statement and documents to the opposite party within the same time.

Every expert's report or other document which the arbitrators may invoke in support of their decision must be transmitted to the parties.

“944.3 Proceedings are oral. A party may nevertheless produce a written statement.

“944.4 The arbitrators must give notice to the parties of the date of the hearing and, where such is the case, the date on which they will inspect the property or visit the premises.

“944.5 If one party fails to file his application or defense, fails to appear at the hearing or fails to produce the evidence in support of his claims, the arbitrators shall record the failure and may, as the case may be, continue or terminate the arbitration proceedings.

“944.6 Witnesses are summoned in accordance with articles 280 to 283.

Where a person who has been duly summoned and to whom travelling expenses have been advanced fails to appear, a party may apply to a judge to compel him to appear in accordance with article 284.

“944.7 The arbitrators have the power to administer oaths and receive solemn affirmations.

“944.8 Where, without a valid reason, a witness refuses to answer or refuses to produce an object in his possession which is of interest to the dispute, a party may with leave of the arbitrators apply to a judge to issue a rule under article 53.

“944.9 Articles 307, 308, 309, 316 and 317 apply to the hearing of witnesses.

“944.10 The arbitrators shall settle the dispute according to the rules of law which they consider appropriate and, where applicable, determine the amount of the damages.

They cannot act as mediators except with the prior concurrence of the parties.

They shall in all cases decide according to the stipulations of the contract and take account of applicable usage.

“944.11 Every decision of the arbitrators shall be rendered by a majority of voices. One arbitrator, however, with authorization of the parties or of all the other arbitrators may decide questions of procedure.

Written decisions must be signed by all the arbitrators; if one of them refuses to sign or cannot sign, the others must record that fact and the decision has the same effect as if it were signed by all of them.

“CHAPTER VI

“ARBITRATION AWARD

“945. If the arbitration award is not made within six months after the day on which the last of the arbitrators notified the parties that he was accepting his appointment, one of the parties may apply to a judge to make any order for the protection of the rights of the parties.

“945.1 The decision of the judge under article 945 is final and without appeal.

“945.2 The arbitrators are bound to keep the advisement secret.

“945.3 If the parties settle the dispute, the arbitrators shall record the agreement in an arbitration award.

“945.4 The arbitration award must be made in writing by a majority of voices. It must state the reasons on which it is based and be signed by all the arbitrators; if one of them refuses to sign or is unable to sign, the others must record that fact and the award has the same effect as if it were signed by all of them.

“945.5 The arbitration award must contain an indication of the date and place at which it was made.

The award is deemed to have been made at the indicated date and place.

“945.6 The arbitration award binds the parties upon being made. A copy signed by the arbitrators must be remitted to each of the parties immediately.

“945.7 The arbitrators may of their own motion, within thirty days after making the arbitration award, correct any error in writing or calculation or any other inadvertently made error in the award.

“945.8 The arbitrators may, on the application of a party made within thirty days after receiving the arbitration award,

1. correct any error in writing or calculation or any other inadvertently made error in the award;
2. interpret a specific part of the award, with the prior agreement of the parties;
3. render a supplementary award on a part of the application omitted in the award.

The interpretation forms an integral part of the award.

“945.9 Any decision of the arbitrators correcting, interpreting or supplementing the award pursuant to an application contemplated in article 945.8 must be rendered within sixty days after the application. Articles 945.2 to 945.6 apply to the decision.

If the arbitrators do not render their decision before the expiry of the prescribed time, a party may apply to a judge to make any order for the protection of the rights of the parties. Article 945.1 applies to the decision.

“CHAPTER VII

“HOMOLOGATION OF THE ARBITRATION AWARD

“946. An arbitration award cannot be put into compulsory execution until it has been homologated.

“946.1 A party may, by motion, apply to the court for homologation of the arbitration award.

“946.2 The court examining a motion for homologation cannot enquire into the merits of the dispute.

“946.3 The court may postpone its decision on the homologation if an application has been made to the arbitrators by virtue of article 945.8.

If the court acts pursuant to the first paragraph, it may, on the application of the party applying for homologation, order the other party to provide security.

“946.4 The court cannot refuse homologation except on proof that

1. one of the parties was not qualified to enter into the arbitration agreement;
2. the arbitration agreement is invalid under the law elected by the parties or, failing any indication in that regard, under the laws of Québec;
3. one of the parties had no opportunity to assert his rights;
4. the arbitrators exceeded their competence or powers; or
5. the mode of appointment of arbitrators or the applicable arbitration procedure was not observed.

In the case of subparagraph 4 of the first paragraph, the only provision not homologated is that wherein the arbitrators exceeded their competence or powers, if it can be dissociated from the rest.

“946.5 The court cannot refuse homologation of its own motion unless it finds that the matter in dispute cannot be settled by arbitration in Québec or that the award is contrary to public order.

“946.6 The arbitration award as homologated is executory as a judgment of the court.

“CHAPTER VIII

“ANNULMENT OF THE ARBITRATION AWARD

“947. The only possible recourse against an arbitration award is an application for its annulment.

“947.1 Annulment is obtained by motion to the court or by opposition to a motion for homologation.

“947.2 Articles 946.2 to 946.5, adapted as required, apply to an application for annulment of an arbitration award.

“947.3 On the application of one party, the court, if it considers it expedient, may suspend the application for annulment for such time as it deems necessary to allow the arbitrators to take whatever measures are necessary to remove the grounds for annulment, even if the time prescribed in article 945.8 has expired.

“947.4 The application for annulment must be made within three months after reception of the arbitration award or of the decision rendered under article 945.8.

“TITLE II

“OF RECOGNITION AND EXECUTION OF ARBITRATION AWARDS MADE OUTSIDE QUÉBEC

“948. This Title applies to an arbitration award made outside Québec whether or not it has been ratified by a competent authority.

“949. An arbitration award shall be recognized and executed if the matter in dispute is one that may be settled by arbitration in Québec and if its recognition and execution are not contrary to public order.

“949.1 An application for recognition and execution is made by way of a motion for homologation to the court which would have had competence in Québec to decide the matter in dispute submitted to the arbitrators.

The motion must be accompanied with the original or a copy of the arbitration award and of the arbitration agreement. These originals or copies must be authenticated by an official representative of the Government of Canada or of the Gouvernement du Québec, or by the government or a public officer of the place where the award was made.

“950. A party against whom an arbitration award is invoked may object to its recognition and execution by establishing that

1. one of the parties was not qualified to enter into the arbitration agreement;
2. the arbitration agreement is invalid under the law elected by the parties or, failing any indication in that regard, under the laws of the place where the arbitration award was made;
3. he had no opportunity to assert his rights;
4. the arbitrators exceeded their competence or powers;
5. the manner in which the arbitrators were appointed or the arbitration procedure did not conform with the agreement of the parties or, if there was no agreement, with the laws of the place where the arbitration took place; or
6. the arbitration award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the place or pursuant to the laws of the place in which the arbitration award was made.

In the case of subparagraph 4 of the first paragraph, if the provision of the arbitration award wherein the arbitrators exceeded their

competence or powers can be dissociated from the rest, the rest may be recognized and declared executory.

“951. The court may postpone its decision in respect of recognition and execution of an arbitration award if the competent authority referred to in subparagraph 6 of the first paragraph of article 950 has made an application to have the award set aside or suspended.

If the court postpones its decision, it may, on the application of the party applying for recognition and execution of the award, order the other party to furnish security.

“951.1 A court examining an application for recognition and execution of an arbitration award cannot enquire into the merits of the dispute.

“951.2 The arbitration award as homologated is executory as a judgment of the court.”

3. This Act comes into force on (*insert here the date of assent to this Act*).