

THIRD SESSION

THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 76

**An Act to secure the carrying out of the Entente between
France and Québec regarding mutual aid in judicial matters**

First reading

Second reading

Third reading

M. MARC-ANDRÉ BÉDARD

Ministre de la justice

L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTE

The object of this bill is to give effect to an agreement regarding mutual aid in judicial matters between France and Québec.

Bill 76

An Act to secure the carrying out of the Entente between France and Québec regarding mutual aid in judicial matters

Entente approved and has effect.

1. The Entente reproduced in the schedule, designed to promote mutual aid in judicial matters between France and Québec, is approved and has effect notwithstanding any provision of any general law or special act or of any regulation thereunder.

Regulation.

2. The Government may, by regulation, specify the terms and conditions of the carrying out of the Entente.

Coming into force.

The regulation is published in the *Gazette officielle du Québec* and comes into force on the date of that publication or any earlier or later date fixed by the regulation.

Minister responsible.

3. The Ministre de la justice is responsible for the carrying out of this act.

Effect retro-active. Coming into force.

4. This act has effect as from 9 September 1977.

5. This act comes into force on the day of its sanction.

SCHEDULE

ENTENTE BETWEEN QUÉBEC AND FRANCE REGARDING
JUDICIAL MUTUAL AID IN CIVIL, COMMERCIAL AND
ADMINISTRATIVE MATTERS [TRANSLATION]

TITLE I

DESIGNATION OF CENTRAL AUTHORITIES

The ministries of justice of France and Québec are designated as the Central Authorities in charge of receiving applications for judicial mutual aid in civil, commercial and administrative matters and of dealing with them.

For that purpose, these Central Authorities communicate directly with each other.

Applications for judicial mutual aid and the documents attached thereto, as well as the documents attesting to their execution are exempt from authentication or any similar formal procedure. However, such documents must be so drawn up as to make their authenticity apparent and, in particular, must bear the official seal of the authority qualified to issue them.

TITLE II

TRANSMISSION AND DELIVERY OF JUDICIAL AND
EXTRAJUDICIAL WRITTEN PROCEEDINGS

1. Applications for service and notice of judicial and extrajudicial written proceedings in civil, commercial and administrative matters, intended for natural or artificial persons residing in France or in Québec, are forwarded through the Central Authorities who are entrusted with dealing with them.

2. The application indicates the authority issuing the proceeding, the name and capacity of each party, the name and address of the person for whom it is intended and the nature of the proceeding.

The proceedings to be notified or served that are attached to the application are sent in duplicate. The application and the proceedings are drawn up in the French language or accompanied with a translation in that language.

3. The petitioned authority confines itself to delivering the proceeding to the person for whom it is intended by such means

as it considers most appropriate. Delivery or the attempt to make delivery does not give entitlement to the reimbursement of costs, even if the address of the person for whom the proceeding is intended is insufficient, incomplete or inaccurate.

The petitioning authority may ask the petitioned authority to undertake or order the service or notice of the proceeding in a particular form consistent with the legislation of the petitioned authority. The payment of the costs incurred by the use of a particular form, especially by the intervention of a law official, is incumbent on the petitioning authority.

4. Delivery is proved either by a receipt, dated and signed by the person concerned, or by an attestation or certificate from the petitioned authority. The receipt or attestation may appear on one of the copies of the proceeding to be served or notified. The attestation states the form, place and date of delivery, the name of the person to whom the proceeding was delivered and, where that is the case, the refusal of the person to whom it is addressed to accept the proceeding or the fact that prevented the delivery from being made.

The receipt or attestation, together with a copy of the proceeding to be served or notified, may be addressed directly to the applicant by the authority that drew it up, without the intervention of the petitioning Central Authority.

5. The petitioned authority may refuse to act on an application for notice or service if it considers that it might entail interference in its public order or jurisdiction. If it refuses to act, the petitioned authority informs the Central Authority without delay, giving its reasons therefor.

6. In civil, commercial and administrative matters, the preceding provisions do not impede

(a) the faculty of using diplomatic or consular channels to carry out directly and without restraint the service of judicial and extrajudicial written proceedings in keeping with the usages obtaining between France and Québec;

(b) the faculty of giving notice of proceedings directly by mail to persons in France or in Québec;

(c) the faculty of the persons interested in a judicial suit, of having proceedings served or notified by law officials, civil servants or other qualified persons in France or in Québec;

(d) the faculty of law officials, civil servants or other qualified persons in France or in Québec of having proceedings served or notified directly by law officials, civil servants or other qualified persons in France or in Québec. For such purpose, the pro-

ceeding may be transmitted directly, in France, to the Chambre nationale des huissiers de justice in Paris and, in Québec, to the Bureau de l'administration de la Loi des huissiers at the ministry of justice in Québec, with instructions to send them to a territorially competent bailiff. In this case, the applicant must either pay the costs of service in advance, in a lump sum, or make a written undertaking to pay them.

7. Where, for the purposes of service or notification, it has been necessary to transmit a writ of summons or an equivalent proceeding to France or to Québec and where the defendant does not appear, the judge may suspend his decision until it is established that the proceeding has been served or notified.

TITLE III

TRANSMISSION AND EXECUTION OF ROGATORY COMMISSIONS

1. In civil, commercial and administrative matters, the French and Québec judicial authorities, in conformity with the provisions of their legislation, may give each other a rogatory commission for the purpose of instituting the trial and judicial proceedings they consider necessary, except proceedings for execution or measures of conservation.

Such provision does not impede the faculty of executing rogatory commissions through diplomatic or consular channels in keeping with the usages obtaining between France and Québec.

2. A trial proceeding may be applied for so as to enable the persons concerned to obtain grounds of proof in a future proceeding, in conformity with the law of the petitioned judicial authority.

3. Rogatory commissions are forwarded through the Central Authorities in conformity with Title I hereinabove.

Where the rogatory commission has not been executed, wholly or partly, the petitioned authority informs the petitioning authority thereof through the same channels, giving the reasons therefor.

4. Rogatory commissions are drawn up in the French language.

They contain the following indications, to facilitate their execution:

(a) the petitioning authority and, if possible, the petitioned authority;

- (b) the identities and addresses of the parties and, as the case may be, of their representatives;
- (c) the nature and object of the suit;
- (d) the trial proceedings or other judicial proceedings to be carried out;
- (e) the names and addresses of the persons to be heard;
- (f) the questions to be asked of the persons to be heard or the facts on which they must be heard;
- (g) the documents or other objects to be examined;
- (h) as the case may require, the application for receiving a sworn or solemnly affirmed deposition and, where that is the case, the indication of the formula to be used;
- (i) where that is the case, the special form the use of which is required.

5. The rogatory commission is executed by the petitioned judicial authority in conformity with its law unless the petitioning judicial authority has asked that it be proceeded with in a particular form.

If requested in the rogatory commission, the questions and answers are integrally transcribed or recorded. The judge may ask and authorize the parties and their defendants to ask questions; such questions must be drawn up in or translated into the French language. The same holds true for the answers to these questions.

The appointed judge informs the appointing jurisdiction, if it so requests, of the place, day and time fixed for the execution of the rogatory commission.

6. The execution of a rogatory commission may be refused by the petitioned authority if it considers it to be beyond its powers or that it might entail interference in its public order or jurisdiction.

7. The execution of the rogatory commission takes place without costs or tax for the services rendered by the petitioned judicial authority.

However, the amounts due to witnesses, experts and interpreters are to be paid by the petitioning authority. The same holds true for the costs resulting from the use of a special form required by the petitioning authority.

In such cases, the reimbursement of the costs of execution is guaranteed by the applicant in the form of a written undertaking attached to the rogatory commission.

8. The documents evidencing the execution of the rogatory commission are forwarded through the Central Authorities.

TITLE IV

JUDICIAL AID AND "JUDICATUM SOLVI" SURETY

1. French residents in Québec and Québec residents in France may receive judicial aid, in Québec and in France, respectively, in conformity with the law of their place of residence.

2. The certificate attesting to the insufficiency of the resources of the applicant is issued to him by the authorities of his place of residence.

The authority in charge of ruling on the application for judicial aid may ask the authorities of the place of origin of the applicant for supplementary information. Such supplementary inquiries are forwarded through the Central Authorities.

3. No surety or deposit, under any appellation whatever, may be required, in virtue of any law of France or Québec, of French residents in Québec or Québec residents in France, by reason of either their foreign nationality or their lack of domicile or residence.

TITLE V

ACTS OF CIVIL STATUS

The competent authorities of the civil status in France and the prothonotaries in Québec issue, free of charge, copies of or extracts from acts of civil status.

TITLE VI

APPLICATIONS FOR INQUIRY — PROTECTION OF MINORS AND OF ALIMENTARY CREDITORS

1. The Central Authorities may, as an act of judicial mutual aid, if nothing prevents it, address to each other requests for information or applications for inquiry within the scope of civil or commercial proceedings of which their judicial authorities are seized and, in particular, transmit to each other, free of charge, copies of judicial decisions.

2. Within the scope of proceedings respecting the custody or protection of minors, the Central Authorities

(a) communicate to each other, at each other's request, any information concerning measures taken for the custody or protection of minors, the carrying into effect of such measures and the material and moral situation of such minors;

(b) lend each other mutual aid in locating in their territory and obtaining the voluntary return of displaced minors, where the right of custody has simply been ignored;

Where the right of custody is disputed, the Central Authorities refer it urgently to their competent authority to take the necessary measures of protection and to decide the application for the return of the minor, taking into account all the elements of the case, particularly the decisions and measures already taken by the French or Québec judicial authorities;

(c) cooperate with a view to arranging visiting rights for the benefit of the parent who does not have custody, and to insuring respect of the conditions imposed by their respective authorities for the carrying out and free exercise of these visiting rights, as well as the undertakings of the parties in regard to that parent.

3. Within the scope of proceedings concerning the recovery of maintenance abroad, the Central Authorities lend each other mutual aid in locating and hearing alimentary debtors staying in their territory and in obtaining the voluntary recovery of alimentary pensions.

TITLE VII

RECOGNITION AND EXECUTION OF DECISIONS REGARDING THE STATUS AND CAPACITY OF PERSONS AND PARTICULARLY THE CUSTODY OF CHILDREN AND ALIMENTARY OBLIGATIONS

1. Decisions regarding the status and capacity of persons and particularly the custody of children and alimentary obligations handed down by jurisdictions sitting in France and in Québec, respectively, have *pleno jure* the authority of *res judicata* in France and in Québec, if they meet the following conditions:

(a) the decision is issued by a competent jurisdiction according to the rules regarding concurrent jurisdictions obtaining in the territory of the authority where the decision is executed;

(b) the decision has applied the law applicable to the dispute under the rules of solution of conflicts of laws obtaining in the territory of the authority where the decision is executed;

(c) the decision, according to the laws of the political entity in which it was handed down, is not subject to any further ordinary recourse or appeal;

(d) the parties have been regularly summoned, represented or declared in default;

(e) the decision does not include anything contrary to public order under the responsibility of the authority in whose territory it is invoked;

(f) a dispute between the same parties, based on the same facts and having the same object,

— is not pending before a jurisdiction of the petitioned authority;

— has not given rise to a decision rendered by a jurisdiction of the petitioned authority;

— has not given rise to a decision rendered in a third political entity, meeting the conditions necessary for its recognition in the territory of the petitioned authority.

2. No decision regarding the status and capacity of persons and particularly the custody of children and alimentary obligations may give rise to any forced execution by the authorities having recognized them in accordance with the preceding paragraph until it has been declared executory.

3. *Exequatur* proceedings in respect of the decision are governed by the law of the authority of the place where the decision is executed. The petitioned judicial authority confines itself to verifying whether the decision which is the subject of the application for execution meets the conditions set forth in paragraph 1 of this title, without making any examination of the case on its merits.

4. The party to an action who invokes the authority of a judicial decision or demands its execution must file

(a) a properly authenticated transcript of the decision;

(b) the original of the writ of service of the decision or of any other proceeding in lieu of service;

(c) a certificate of the clerk establishing that no opposition or appeal is pending against the decision;

(d) where that is the case, a copy of the summons of the party who failed to appear at the trial, certified true by the clerk of the jurisdiction having rendered the decision.

5. Applications to obtain the execution of a judicial decision handed down in France or Québec dealing with the custody of children or alimentary obligations may be forwarded through the Central Authorities.

Québec, 9 September 1977

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