



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Draft Bill

Draft Bill to enact the new Code of Civil Procedure

**Tabled by
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Minister of Justice**

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EXPLANATORY NOTES

This draft bill establishes 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 all participants in the justice system.

This draft 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 format, 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 civil justice founded on private and voluntary modes of dispute prevention and resolution, and requiring potential litigants to consider these modes first before turning to the courts;*

- laying down certain principles that are to guide the courts, the parties and their lawyers throughout a proceeding, including the principle of proportionality, which dictates that the actions taken, pleadings filed and means of proof used must be proportionate, in terms of the cost and time involved, to the nature and complexity of the matter and the purpose of the demand;*

- recognizing that the mission of the courts includes not only facilitating conciliation but also ensuring proper case management in keeping with the principles and objectives of procedural law, and adopting rules to that effect requiring that the parties file a true case protocol in which they have set out their agreements and undertakings, defined the issues in dispute and determined how the proceeding will unfold, and providing for case management conferences presided over by a judge;*

- revisiting the concept of costs, introducing criteria to facilitate the awarding of costs, establishing that each party is to bear its own costs, and empowering the court, when awarding costs, to impose sanctions for any improper use of procedure;*

– *defining rules for the disclosure of evidence that require the parties to be open with each other and keep each other informed, setting time limits consistent with these rules, allowing and encouraging the parties to make their case orally, especially when presenting and defending against certain types of demands, providing a framework for pre-trial examinations which, among other things, limits their length, encouraging the parties to call on a joint expert, providing for the reconciliation of conflicting expert's reports and establishing that an expert's mission is to enlighten the court and that this mission overrides the parties' interests;*

– *in family matters, allowing the court, when already seized of a demand relating to the children of de facto spouses, to hear other demands between the spouses at the same time, and allowing the Court of Québec, when seized of a demand relating to the adoption of a child or to a youth protection matter, to rule on ancillary issues relating to child custody or the exercise of parental authority; and*

– *establishing that, in the execution of a judgment, the court bailiff must act in the interests of justice and impartially to ensure that the process is carried out in the manner that is most advantageous for all the parties (the sale of seized property at a commercially reasonable price, for example) and simplifying the rules regarding exemption from seizure and the sale of seized property.*

This draft bill also unifies the rules that apply to judicial review by the Superior Court, formulates homologation rules, and brings the special rules that govern mediation and arbitration together in a new Book. As well, it allows the use of information technology in civil procedure.

LEGISLATION AMENDED BY THIS DRAFT BILL:

- Civil Code of Québec;
- Act respecting the Barreau du Québec (R.S.Q., chapter B-1);
- Court Bailiffs Act (R.S.Q., chapter H-4.1);
- Act respecting the class action (R.S.Q., chapter R-2.1);
- Courts of Justice Act (R.S.Q., chapter T-16).

LEGISLATION REPLACED BY THIS DRAFT BILL:

- Code of Civil Procedure (R.S.Q., chapter C-25).

LEGISLATION REPEALED BY THIS DRAFT BILL:

- Special Procedure Act (R.S.Q., chapter P-27).

REGULATION REPEALED BY THIS DRAFT BILL:

- Tariff of Judicial Fees of Advocates (R.R.Q., chapter B-1, r. 22).

Draft Bill

DRAFT BILL TO ENACT THE NEW CODE OF CIVIL PROCEDURE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PRELIMINARY PROVISION

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

This Code is designed to enable, in the public interest, the resolution of interpersonal, collective or societal disputes through appropriate, efficient and fair-minded processes of civil justice that encourage the parties to participate in preventing and resolving disputes.

This Code is also intended 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 all participants in the justice system.

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 and, when circumstances allow, it supplements the silence of other laws in matters it addresses.

BOOK I

GENERAL FRAMEWORK OF CIVIL PROCEDURE

TITLE I

PRINCIPLES OF CIVIL PROCEDURE APPLICABLE TO PRIVATE MODES OF DISPUTE PREVENTION AND RESOLUTION

1. Private civil justice is founded on private modes of dispute prevention and resolution that are chosen by mutual agreement by the parties concerned in order to prevent an eventual dispute or resolve an existing one.

The principal such modes are negotiation between the parties, and mediation and arbitration, which bring a third person into play to assist the parties. The parties can resort to any other process that suits them and that they consider appropriate, whether or not it borrows from the negotiation, mediation or arbitration models.

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

2. Parties who commit to a dispute prevention and resolution process do so on a voluntary basis. They are required to participate in good faith, to be open and transparent with each other, including as regards the information in their possession, and to co-operate actively in searching for a solution.

They and the third persons assisting them must ensure that their actions are proportionate, in terms of the cost and time involved, to the nature and complexity of the dispute.

3. Parties who call on a third person to assist them or to adjudicate their dispute choose the person together and verify his or her impartiality towards them before mandating the person to act. Subject to any agreement between them, they are equally responsible for the payment of the person's fee and expenses.

The third person must be capable of acting impartially and diligently and in accordance with the requirements of good faith.

4. Parties who choose to engage in a private dispute prevention or resolution process, and the third person involved in the process, 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 and to their own remedies before the courts.

5. Parties can prevent or resolve a dispute on the basis of norms or criteria other than legal norms or criteria, subject to respect for human rights and freedoms and compliance with other public policy rules.

6. Parties who agree to engage in a private dispute prevention or resolution process, together with the third person involved in the process, if any, determine the procedure applicable to the process they have selected, but insofar as procedure has not been so determined and the parties have opted for mediation or arbitration or a similar process, the rules of Book VII supplement the rules determined by the parties.

7. If the parties are unable to resolve the dispute through a private process, they can refer it to the courts, subject to the provisions governing arbitration.

TITLE II

PRINCIPLES OF PROCEDURE APPLICABLE BEFORE THE COURTS

8. Public civil justice is administered by the courts under the legislative authority of Québec. The Court of Appeal, the Superior Court and the Court of Québec exercise their jurisdiction throughout the territory of Québec.

Municipal courts exercise civil jurisdiction in the matters assigned to them by special Acts, but only within the territory specified by those Acts and by their constituting instruments. The organization and functioning of municipal courts is governed by the Act respecting municipal courts (R.S.Q., chapter C-72.01).

CHAPTER I

MISSION OF COURTS

9. It is the mission of the courts to adjudicate the disputes brought before them, in accordance with the applicable rules of law and, in this regard, to speak the law. It is also their mission to make a ruling, even in the absence of a dispute, where, because of the nature of a matter or the capacity of the parties, the law requires that the issue be submitted to the court.

Moreover, their mission, both in first instance and in appeal, includes facilitating the conciliation of the parties if the law so requires, if the parties request it or consent to it or if circumstances permit.

It is also part of the mission of the courts to ensure proper case management in keeping with the principles and objectives of procedural law.

The courts and judges enjoy judicial immunity in the pursuit of their mission.

10. The courts cannot seize themselves of a matter; it is up to the parties to introduce a proceeding and determine its subject matter.

The courts cannot adjudicate beyond what is sought by the parties. If necessary, they can correct any inaccuracy in the conclusions set out in a written pleading in order to give them their proper characterization in light of the allegations contained in the pleading.

The courts are not required to decide theoretical questions or to adjudicate where a judgment would not put an end to the uncertainty or the controversy, but they cannot refuse to adjudicate under the pretext of the silence, obscurity or insufficiency of the law.

In all cases, they must decide in the best interests of justice.

CHAPTER II

PUBLIC NATURE OF PROCEDURE BEFORE COURTS

11. Civil justice administered by the courts is public. Anyone can attend court hearings wherever they are held, and have access to court records and entries in the registers of the courts.

An exception to this principle applies if the law provides for closed proceedings or for the confidentiality of records, documents or information. In family matters, for example, hearings of the court of first instance are held in camera; however, the court, in the interests of justice, can order that a hearing be public.

The court can also make an exception to the principle of open proceedings if, in its opinion, public order, the proper administration of justice, the preservation of the dignity of the persons involved or the legitimate protection of important interests requires that the hearing be held in camera or that access to the record or the disclosure or circulation of information or documents specified by the court be prohibited or restricted.

Exceptions to the principle of open proceedings apply despite section 23 of the Charter of human rights and freedoms.

12. Lawyers, notaries, articling students, and journalists who show proof of their status can attend a hearing held in camera; if the hearing concerns the personal integrity or capacity of a person, persons whom the court considers interested persons can also attend. The court can exclude such persons, however, if circumstances so require, to prevent serious prejudice to a person whose interests may be affected by the demand or the proceeding.

Unless authorized by the court, no person attending an in-camera hearing, nor any other person can disclose information that would allow the persons who are protected by the in-camera rule or order to be identified, under pain of contempt of court.

13. Access to records in personal integrity or capacity matters and family matters is restricted.

Documents pertaining to a person's health or psychosocial situation that are filed in the records of the courts in other matters are confidential; they must be filed under seal by the parties.

14. Confidential or access-restricted records or documents can only be consulted or copied by the parties, their representatives, persons designated by law or persons, including journalists, who have been authorized by the court after proving a legitimate interest, in which case the court can determine appropriate conditions and procedure. The Minister of Justice, by virtue of that office, is considered to have a legitimate interest to access records for research, reform or evaluation purposes.

Judgments filed in a confidential or access-restricted record can only be published if the identity of the persons mentioned in them is protected and the passages that allow persons to be identified have been deleted or redacted.

15. Persons present at a court hearing must conduct themselves in a respectful and restrained manner. Those who prove a legitimate interest can make a sound recording of the proceedings and the decision, but cannot broadcast them. In no case can images be recorded.

Moreover, the parties and their representatives must, throughout the proceeding, exhibit the respect owed to the justice system.

All must obey the orders of the court and of the officers of justice under its authority, under pain of contempt of court.

CHAPTER III

GUIDING PRINCIPLES OF PROCEDURE

16. The court cannot rule on a demand, or order a measure on its own initiative, that affects the rights of a party unless the party has been heard or duly summoned.

In any contentious proceeding, the court, even on its own initiative, must uphold the adversarial principle and see that it is adhered to until the judgment and during execution of the judgment. It cannot base its decision on grounds which the parties have not had the opportunity to debate.

17. Judges must be impartial in all their decisions and rulings; a judge can be recused if there are serious reasons to doubt his or her impartiality.

18. Parties must adhere to the principle of proportionality and ensure that their actions, their pleadings, including their choice of an oral or a written defence, and the means of proof they use are proportionate, in terms of the cost and time involved, to the nature and complexity of the matter and the purpose of the demand.

Judges, in managing the proceedings they are assigned, must likewise ensure that the measures or acts they order or authorize, whether at the case management, trial or execution stage, are so proportionate, while bearing in mind the efficient processing of the court's caseload and the general interest of justice.

19. Subject to the duty of the courts to ensure proper case management and the smooth conduct of proceedings, the parties have control over their case insofar as they comply with the principles, objectives and rules of procedure and the prescribed time limits.

The parties must be careful to confine the case to what is necessary to resolve the dispute, and must refrain from acting with the intent to cause prejudice to another person or behaving in an excessive or unreasonable manner, contrary to the requirements of good faith.

The parties can at any time agree to settle their dispute by resorting to a private mode of dispute prevention and resolution or to judicial conciliation; they can also otherwise terminate the proceeding at any time.

20. The parties are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved. They must, among other things, at the time prescribed by this Code or determined in the case protocol, inform one another of the facts on which their claims are based and of the evidence they intend to produce. They can also, even before a demand is introduced, co-operate by agreeing on a pre-judiciary protocol.

21. A person who is summoned as a witness is duty-bound to appear, testify and tell the truth.

A witness has the right to be informed, by the summoning party, of the reason why he or she was summoned, of the subject matter of the testimony and, if the witness so requests, of the order of the proceeding. A witness also has the right to be informed without delay that his or her presence is no longer required.

22. Individuals can represent themselves before the courts, but must comply with the rules of procedure.

They can act for others only within the limits set by law; they are otherwise required to be represented as permitted or required by law.

23. The taking of an oath is an undertaking to tell the truth or to exercise a function impartially and competently.

In addition to cases in which an oath is required by law, an oath can be required by the court whenever it considers it necessary in the interests of justice. The oath can be taken before a judge, a court clerk or any other person legally authorized to administer oaths.

CHAPTER IV

RULES OF INTERPRETATION AND APPLICATION OF THIS CODE

24. The rules contained in this Code are designed to facilitate the resolution of disputes and to bring out the substantive law and ensure that it is carried out.

Therefore, failure to observe a rule that is not imperative does not prevent a demand from being decided provided the failure is remedied on a timely basis; likewise, if no specific procedure is provided for exercising a right, any mode of proceeding can be used that is not inconsistent with the rules contained in this Code.

25. In applying this Code, the use of any appropriate technological means that is available to both the parties and the court is permitted, within the technological environment in place to support the administration of the courts.

The court, even on its own initiative, can resort to or order the use of such means, including for case management purposes; if it considers it necessary, the court, despite an agreement between the parties, can require a person to appear in person at a hearing, a conference or an examination.

26. In a state of emergency declared by the Government or in a situation where it is impossible to comply with the rules of this Code or to use a means of communication, the Chief Justice of Québec and the Minister of Justice can jointly suspend or extend a prescription or procedural period for a specified time, or authorize the use of another means of communication in the manner they specify.

Their decision takes effect immediately, and must be published without delay in the *Gazette officielle du Québec*.

27. After considering the effects of the project on the rights of individuals and obtaining the agreement of the Chief Justice of Québec or the Chief Justice of the Superior Court or the Chief Judge of the Court of Québec, according to their jurisdiction, and after consulting the Barreau du Québec or, as applicable, the Chambre des notaires du Québec or the Chambre des huissiers de justice du Québec, the Minister of Justice, by regulation, can modify a rule of procedure, or introduce a new one, for a specified time not exceeding three years, for the purposes of a pilot project conducted in specified judicial districts.

TITLE III

JURISDICTION OF COURTS

CHAPTER I

SUBJECT-MATTER JURISDICTION OF COURTS

DIVISION I

JURISDICTION OF COURT OF APPEAL

28. The Court of Appeal is the general appellate court in charge of hearing appeals against judgments of other courts that are subject to such an appeal.

29. Judgments of the Superior Court or the Court of Québec that terminate a proceeding where the value of the subject matter of the dispute in appeal is \$50,000 or more and judgments that pertain to the personal integrity, status or capacity of a person, including decisions in adoption matters and protective mandate matters, can be appealed as of right.

The same applies to judgments that rule on the special rights of the State, contempt of court judgments and judgments of the Superior Court or the Court of Québec that terminate a proceeding in cases where that Court has exclusive jurisdiction under a law other than this Code.

To calculate the value of the subject matter of the dispute in appeal, account must be taken of interest already accrued on the date of the judgment in first instance and of the additional indemnity mentioned in article 1619 of the Civil Code. Legal costs are disregarded. If the subject matter of the appeal is the right to additional damages for bodily injury, only the amount of those damages is to be taken into account.

30. The following can be appealed only with leave of the Court of Appeal:

(1) Superior Court or Court of Québec judgments that terminate a proceeding but are not appealable as of right;

(2) judgments in non-contentious matters that are not appealable as of right;

(3) judgments ruling on legal costs;

(4) judgments ruling on execution matters;

(5) judgments confirming or quashing a seizure before judgment;

(6) judgments dismissing a judicial demand because of its improper nature;

(7) judgments denying a demand for forced or voluntary intervention;

(8) judicial review judgments of the Superior Court relating to the evocation of a case pending before a court or to a decision made by a person or body or a judgment rendered by a court that is subject to judicial review.

Leave to appeal is granted if the Court of Appeal considers that the matter at issue is one that should be submitted to it, for example because it involves a question of principle, a new issue or a question of law that has given rise to conflicting judicial decisions.

31. A judgment of the Superior Court or the Court of Québec rendered in the course of a proceeding is appealable as of right if it rules on an objection

to evidence based on the duty of discretion of public servants or professional secrecy.

Such a judgment can be appealed with leave of a judge of the Court of Appeal if it determines part of the issue or causes irremediable prejudice to a party, including if it allows an objection to evidence.

If a judgment ruling on an objection to evidence is rendered in the course of the trial, an appeal against that judgment does not suspend the proceeding unless a judge of the Court of Appeal so decides, but the judgment on the merits cannot be rendered, nor the evidence concerned heard, until the decision on the appeal is rendered. In all other cases, such a judgment cannot be challenged except on an appeal against the judgment on the merits.

32. Case management measures relating to the conduct of a proceeding and rulings on incidental demands concerning a continuance of suit, the joinder or severance of demands, the suspension of a trial or the splitting of a proceeding cannot be appealed. However, if a measure or a decision appears unreasonable in light of the guiding principles of procedure, a judge of the Court of Appeal can grant leave to appeal.

DIVISION II

JURISDICTION OF SUPERIOR COURT

33. The Superior Court is the court of original general jurisdiction. It has jurisdiction in first instance to hear and determine any demand not formally and exclusively assigned by law to another court.

It has exclusive jurisdiction to hear and determine class actions.

34. The Superior Court is vested with a general power of judicial review over all courts in Québec other than the Court of Appeal, over public bodies, over legal persons established in the public interest or for a private interest and over partnerships and associations not endowed with juridical personality.

This power cannot be exercised in cases excluded by law or declared by law to be under the exclusive purview of those courts, persons, bodies or groups, except where there is lack or excess of jurisdiction.

A matter is brought to the Court by means of an application for judicial review.

DIVISION III

JURISDICTION OF COURT OF QUÉBEC

35. The Court of Québec has exclusive jurisdiction to hear and determine demands in which the amount claimed or the value of the subject matter of the

dispute, exclusive of interest, is less than \$80,000, including in lease termination matters, as well as demands ancillary to such a demand, including those for the performance in kind of a contractual obligation. However, it does not have such jurisdiction in cases where it is formally and exclusively assigned to another court or adjudicative body, or in family matters.

A demand brought before the Court of Québec is no longer within the jurisdiction of that Court if a cross-demand is made for an amount or value equal to or exceeding \$80,000, or if an amendment to the demand increases the amount claimed or the value of the subject matter of the dispute to \$80,000 or more. Conversely, the Court of Québec alone becomes competent to hear and determine a demand brought before the Superior Court if, by an act of the parties, the amount claimed or the value of the subject matter of the dispute falls below that amount. In either case, the record is transferred to the competent court if all parties agree or if the court so orders on its own initiative or at the request of a party.

If two or more plaintiffs join together or are represented by the same person in the same demand, the Court of Québec has jurisdiction if it is competent to hear each of the demands.

36. Subject to the jurisdiction assigned to the municipal courts, the Court of Québec has jurisdiction, to the exclusion of the Superior Court, to hear and determine demands for the recovery of property taxes, other taxes or any other amount due under an Act to a municipality or a school board, and demands by which the existence or amount of such a debt is contested.

The Court is also competent to hear and determine demands for the reimbursement of an overpayment to a municipality or a school board.

37. The Court of Québec has jurisdiction, to the exclusion of the Superior Court, to hear and determine demands in adoption matters.

In other youth matters, jurisdiction and procedure are determined by special Acts.

If an adoption or youth protection matter is already before the Court of Québec, it can rule on any related demand concerning child custody or the exercise of parental authority.

38. The Court of Québec and the Superior Court have jurisdiction to hear and determine a demand requesting the psychiatric assessment or confinement of a person in a health or social services institution without his or her consent, and to determine the care required by his or her state of health.

39. The Court of Québec has exclusive jurisdiction to hear and determine demands relating to an arbitration insofar as it would be competent to rule on the subject matter of the disagreement referred to the arbitrator, as well as

demands for the recognition and enforcement of a decision rendered outside Québec in a matter within its jurisdiction.

CHAPTER II

TERRITORIAL JURISDICTION OF COURTS

DIVISION I

TERRITORIAL JURISDICTION—APPEAL

40. The Court of Appeal sitting at Montréal hears appeals against judgments rendered in the judicial districts of Beauharnois, Bedford, Drummond, Hull, Iberville, Joliette, Labelle, Laval, Longueuil, Mégantic, Montréal, Pontiac, Richelieu, Saint-François, Saint-Hyacinthe and Terrebonne. The Court of Appeal sitting at Québec hears appeals against judgments rendered in all other districts.

DIVISION II

TERRITORIAL JURISDICTION—FIRST INSTANCE

41. The court having territorial jurisdiction to hear a case is the court of the domicile of the defendant, or of one of the defendants if there are two or more defendants domiciled in different districts.

If the defendant has no domicile in Québec, the court that has territorial jurisdiction is the court of the defendant's residence, the court where the defendant has property or, in the case of a legal person, the court of the place where the defendant has an establishment.

So far as public order permits, the court of the defendant's elected domicile, or the court designated by an agreement between the parties other than an adhesion contract, also has territorial jurisdiction.

42. At the plaintiff's option,

(1) a demand for the performance of contractual obligations can also be brought before the court of the place where the contract was made;

(2) a demand concerning extracontractual civil liability can also be brought before the court of the place where the act or omission giving rise to the prejudice occurred or the court of any of the places where the prejudice was suffered; and

(3) a demand whose subject matter is immovable property can also be brought before the court of the place where the property is wholly or partly situated.

43. If a demand pertains to an employment contract or a consumer contract, the court having jurisdiction is the court of the domicile or residence of the employee or the consumer, whether that person is plaintiff or defendant.

If a demand pertains to an insurance contract, the court having jurisdiction is the court of the domicile or residence of the insured, whether that person is plaintiff or defendant, or, as applicable, the court of the domicile or residence of the beneficiary under the contract. In the case of property insurance, the court of the place where the loss occurred also has jurisdiction.

An agreement to the contrary is unenforceable against the employee, the consumer or the insured.

44. In matters relating to the personal integrity, status or capacity of a person, including a protection mandate, the court having jurisdiction is the court of the domicile or residence of the minor or person of full age concerned or, in the case of an absentee, of the absentee's representative.

A demand concerning a person of full age who resides in a health or social services institution can also be brought before the court of the place where the institution is situated, the court of his or her former domicile or residence, or the court of the domicile of the plaintiff.

If the person of full age under protective supervision, the plaintiff or the representative no longer lives in the district where the judgment was rendered, a demand for review of the judgment can be brought before the court of the domicile or residence of any of them.

45. In family matters, the court having jurisdiction is the court of the parties' common domicile or, if they do not have a common domicile, the court of the domicile of one of the parties, and, in cases of opposition to marriage or civil union, the court of the place of solemnization.

In adoption matters, the court having jurisdiction is the court of the domicile of the minor child or of the plaintiff or, if the parties consent, the court of the place under the responsibility of the director of youth protection who was last in charge of the child.

If the parties are no longer domiciled in the district where the judgment was rendered, a demand for review of the judgment can be brought before the court of the domicile of one of the parties, but if one of them still lives in that district, the demand can only be brought in another district with the consent of that party. Whenever a child is involved, the demand can be brought before the court of the child's domicile.

46. In succession matters, the court having jurisdiction is the court of the place where the succession opened.

However, if the succession did not open in Québec, the demand can be brought, at the plaintiff's option, before the court of the place where the property is situated, the court of the place where the death occurred or the court of the domicile of the defendant or one of the defendants.

The court of the domicile of the liquidator of the succession is also competent in respect of any demand pertaining to the appointment of the liquidator or the exercise of the liquidator's functions.

47. Incidental demands, such as demands in warranty and demands for additional damages for bodily injury, must be brought before the court before which the principal demand was brought.

48. At any stage of a proceeding, the chief justice or chief judge can, for a compelling reason, even on his or her own initiative, in the interest of the parties or of the third persons concerned, order the transfer of a case to another district or order the holding of a trial or of a proceeding pertaining to the execution of a judgment in another district.

CHAPTER III

POWERS OF COURTS

DIVISION I

GENERAL POWERS

49. The courts and judges have all the powers necessary for the exercise of their jurisdiction both in first instance and in appeal.

They can, at any time and in all matters, even on their own initiative, issue orders to safeguard the rights of the parties for the period and subject to the conditions they determine. As well, they can make such orders as are appropriate to deal with situations for which no solution is provided by law.

50. When sitting in first instance in a non-contentious matter or in any case in which the interests of a child or the personal integrity, status or capacity of a person are at issue, the courts, even on their own initiative, can request the attendance of a person or the production of evidence, and hold an informal meeting to hear persons who can enlighten them and, after summoning them, persons whose interests may be affected by the decision.

DIVISION II

POWER TO IMPOSE SANCTIONS FOR IMPROPER USE OF PROCEDURE

51. The courts can, at any time, on request and even on their own initiative, declare a judicial demand or a pleading improper and impose a sanction on the party acting improperly.

The improper use of procedure may consist in a judicial demand or pleading that is clearly unfounded, frivolous or dilatory or in conduct that is vexatious or quarrelsome. It may also consist in bad faith, in the use of procedure in an excessive or unreasonable manner or in a manner that causes prejudice to another person, or in an attempt to pervert the ends of justice, particularly if it restricts freedom of expression in public debate.

52. If a party summarily establishes that the judicial demand or pleading may constitute an improper use of procedure, the onus is on the initiator of the demand or pleading to show that it is not excessive or unreasonable and is justified in law.

A demand for a court ruling on the improper nature of a pleading whose effect is to restrict freedom of expression in a public debate must, in first instance, be dealt with as a matter of priority.

53. If the court notes an improper use of procedure, it can dismiss the judicial demand or reject a pleading, strike out a conclusion or require that it be amended, terminate or refuse to allow an examination, or cancel a subpoena.

In such a case or where there appears to be an improper use of procedure, the court, if it considers it appropriate, can

(1) subject the furtherance of the judicial demand or the pleading to certain conditions;

(2) require undertakings from the party concerned with regard to the orderly conduct of the proceeding;

(3) suspend the proceeding for the period it determines;

(4) recommend to the chief justice or chief judge that special case management be ordered; or

(5) order the initiator of the judicial demand or pleading to pay to the other party, under pain of dismissal of the demand or rejection of the pleading, a provision for the costs of the proceeding, if justified by the circumstances and if the court notes that without such assistance that party's financial situation would likely prevent it from effectively presenting its case.

54. On ruling on whether a judicial demand or pleading is improper, the court can order a provision for costs to be reimbursed, condemn a party to pay, in addition to legal costs, damages in reparation for the prejudice suffered by another party, including the professional fees and disbursements incurred by that other party, or, if justified by the circumstances, award punitive damages.

If the amount of the damages is not admitted or cannot be easily calculated at the time the demand or pleading is declared improper, the court can summarily determine the amount within the time and subject to the conditions it specifies or, in the case of the Court of Appeal, refer the matter back to the court of first instance for a decision.

55. If the improper use of procedure results from a party's quarrelsomeness, the court can, in addition to other sanctions, prohibit the party from instituting a judicial demand or presenting a pleading in an ongoing proceeding except with the authorization of and subject to the conditions determined by the chief justice or the chief judge.

56. If a legal person or an administrator of the property of others resorts to an improper use of procedure, the directors and officers of the legal person who took part in the decision or the administrator can be ordered personally to pay damages.

DIVISION III

POWER TO PUNISH FOR CONTEMPT OF COURT

57. The courts can punish the conduct of any person who is guilty of contempt of court, whether the contempt was committed in or outside the presence of the court. In the case of contempt of the Court of Appeal committed outside the presence of the Court, the matter is brought before the Superior Court.

A transaction that puts an end to the dispute cannot be invoked against the court in a matter of contempt.

58. A person who violates his or her oath, disobeys a court order or injunction or acts in such a way as to interfere with the orderly administration of justice or undermine the authority or dignity of the court is guilty of contempt of court.

59. A person charged with contempt of court must be summoned, by a warrant of the court, to appear on the day and at the time specified to hear proof of the acts held against him or her and to raise grounds of defence.

60. The court issues the warrant on its own initiative or following a demand, which does not require notification.

The warrant must be served personally; however, if circumstances do not permit personal service, the court can authorize another mode of notification.

If the contempt of court is committed in the presence of the court and must be ruled on without delay, the only requirement is that the person be first called upon to justify the behaviour considered to be in contempt.

61. The judge in a contempt of court hearing must not be the judge before whom the contempt was allegedly committed, unless the contempt must be ruled on without delay.

The proof submitted to establish contempt of court must be beyond a reasonable doubt, and the person concerned cannot be compelled to testify.

A judgment of contempt of court must state the sanction imposed and set out the facts upon which it is based.

62. The only sanctions that can be imposed for contempt of court are

(1) payment of a punitive amount not exceeding \$10,000 per day in the case of a natural person, or \$100,000 per day in the case of a legal person, a partnership or an association; or

(2) performance by the person or the person's officers, over a maximum period of one year, of compensatory community work the nature and terms of which are specified by the court or determined under the Code of Penal Procedure (R.S.Q., chapter C-25.1).

If, despite the sanction imposed, the person refuses to comply, the court can order imprisonment for the term it specifies. The person must be brought before the court regularly, and imprisonment can be ordered again until the person complies. Imprisonment can in no case exceed one year.

A judgment ordering community work or imprisonment is enforced in accordance with Chapter XIII of the Code of Penal Procedure.

DIVISION IV

RULES OF PRACTICE

63. A court can adopt rules to regulate practice in that court or in its divisions and to ensure that the procedure established by this Code is properly complied with in keeping with this Code. Such rules must be adopted by a majority vote of the judges of the court.

If expedient, the chief justice or chief judge of the court, after consulting the judges concerned, can issue instructions for one or more districts, as needed. Those instructions, of a purely administrative nature, are the only ones applicable.

64. The chief justice or chief judge of the court determines the most effective mode of consultation so as to obtain the opinion of each of the judges concerned on the rules of practice proposed for adoption.

The draft rules must be published in the *Gazette officielle du Québec* at least 45 days before they are adopted, with a notice stating that comments are welcomed and indicating where they should be sent. If required by the urgency of the situation, the chief justice or chief judge can shorten the publication period, giving reasons in the publication notice.

65. Rules of practice adopted by a court come into force 15 days after their publication in the *Gazette officielle du Québec* or on any later date specified in the rules. However, rules of practice of the Court of Québec that have financial implications come into force only after they have been approved by the Government.

All such rules, as well as any instructions issued by the chief justice or chief judge, must be made easily accessible to the public, including through posting on the courts' website.

CHAPTER IV

COURT OFFICES

66. Court offices provide clerical services to the court they serve, manage the information and documents required for the operation of the court and have custody of court registers, records, orders and judgments. They also manage the fees and costs prescribed by regulation and are responsible for the preservation of court archives.

Court offices perform their functions in accordance with this Code, the rules of practice of the court and the instructions of the chief justice or chief judge and the directives of the Deputy Minister of Justice and within the technological environment in place to support the administration of the courts.

67. Court clerks are in charge of the court office to which they are assigned and exercise the powers conferred on them by law. With the consent of the Minister of Justice or a person designated by the latter, they can designate deputy court clerks, who are authorized to exercise the powers of a court clerk. Court clerks are assisted by the personnel needed to carry out their functions and operate the court office.

In addition, the Minister, by order and with the consent of the chief justice or chief judge, can appoint special clerks to exercise the adjudicative functions assigned to special clerks by law. Special clerks, by virtue of their office, can exercise the powers of court clerks.

CHAPTER V

POWERS OF COURTS, JUDGES AND COURT CLERKS

68. The jurisdiction and powers conferred on the Court of Appeal are exercised by the Court, its judges or the court clerk, as provided in this Code, particularly in Title IV of Book IV, which governs appeals.

The jurisdiction and powers conferred on the courts of first instance are also conferred on the judges appointed to those courts. The courts, when holding hearings, are vested with all the powers conferred by law on judges.

A measure which, under this Code, can be taken by the chief justice or chief judge can also, if warranted, be taken by the associate or assistant chief justice or chief judge, according to the division of responsibilities that prevails at the court, or by another judge designated by them.

69. In first instance, judges sit in open court to hear and try a demand.

Judges can meet with the parties in chambers or some other location of this kind to take case management measures, rule on incidental demands, try a matter that is proceeding by default and without witnesses, hear and decide non-contentious matters, temporary injunctions or execution matters and exercise any other power which they are permitted by law to exercise in chambers. Minutes must be drawn up for all such meetings. Judges can at any time, on request or on their own initiative, refer to the court a matter submitted to them in chambers.

70. Court clerks and special clerks only exercise the jurisdiction expressly assigned to them by law. In matters within their jurisdiction, they have the powers of the judges or the court.

They can, if they consider that the interests of justice so require, refer any matter submitted to them to a judge or to the court.

71. If the judge is absent or unable to act and any delay could result in the loss of a right or cause serious prejudice, the court clerk can exercise the jurisdiction of the judge.

However, the court clerk cannot rule on an incidental demand, issue an order for police assistance or authorize the seizure of a property in the physical possession of a debtor or a seizure before judgment unless no judge or special clerk is present in the district; nor can the court clerk rule on a request for suspension of execution unless it is impossible for him or her to reach a judge in another district or the on-call judge designated by the chief justice or chief judge.

In addition to demands expressly excluded from the jurisdiction of court clerks, the court clerk cannot dispose of a demand relating to personal integrity

or status, an application for judicial review or a demand relating to an injunction.

72. The special clerk can rule on any demand, contested or not, for security for costs, for the summoning of a witness, for the disclosure, production or dismissal of exhibits, for access to a restricted record or for the physical, mental or psychosocial assessment of a person, on a joinder of demands, on particulars, on amendments, on a substitution of lawyer or on relief from default, and on any request to cease representing. As well, in the course of a proceeding or of execution, the special clerk can rule on any pleading, but only with the consent of the parties if it is contested.

The special clerk can homologate any agreement between the parties that provides a complete settlement of a child custody or support matter and can, in order to evaluate the agreement or assess the consent of the parties, convene the parties and hear them, even separately, in the presence of their lawyer. If the special clerk considers that the agreement does not sufficiently protect the children's interests or that consent was obtained under duress, the case is referred to a judge or to the court.

An agreement homologated by the special clerk has the same binding force as a judgment.

Demands and requests that are within the jurisdiction of the special clerk are presented directly to the special clerk and, unless contested, are decided on the face of the record.

73. In non-contentious matters, the jurisdiction of the court is exercised by a judge or the special clerk.

However, the special clerk cannot decide demands concerning a person's status or personal integrity, demands concerning absence or a judicial declaration of death, demands for the review of a decision of the registrar of civil status or demands relating to the publication of rights or the reconstitution of an authentic act or of a public register.

74. Decisions of the court clerk other than administrative decisions and decisions of the special clerk can, on request, be reviewed by a judge in chambers or by the court.

The request for review must state the grounds on which it is based, be notified to the other parties and filed with the court within 10 days after the date of the decision concerned. If the decision is quashed, matters are restored to their former state.

TITLE IV

SPECIAL RIGHTS OF STATE

75. Before resorting to the courts for the resolution of disputes with natural or legal persons, the State and state bodies can, in accordance with the relevant government regulations and to the extent permitted by the public interest and by the applicable legal standards, have recourse to any available private dispute prevention and resolution process.

76. In any civil, administrative, penal or criminal case, a person intending to question the operability, the constitutionality or the validity of a provision of an Act of the Parliament of Québec or the Parliament of Canada, of a regulation made under such an Act, of a government or ministerial order or of any other rule of law must give notice to the Attorney General of Québec. The same applies when the legality of a regulation to which the Regulations Act (R.S.Q., chapter R-18.1) applies is challenged.

Such notice is also required when a person intends to seek remedy from the State, a state body or a legal person established in the public interest for an infringement or denial of his or her fundamental rights and freedoms under the Charter of human rights and freedoms or the Canadian Charter of Rights and Freedoms (Part I of Schedule B to the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom in R.S.C., 1985, App. II, no. 44).

Again, such notice is required when a person intends to raise, in a proceeding, the question of the navigability or floatability of a lake or watercourse or the question of the ownership of the bed or banks of a lake or watercourse.

No such demand can be ruled on unless such notice has been validly given, and the court can only adjudicate with respect to the grounds set out in the notice.

77. To be validly given, the notice to the Attorney General must clearly state the claims the person intends to assert and the grounds on which they are based, and be served on the Attorney General by a court bailiff as soon as possible in the course of the proceeding but, in a civil matter, at least 30 days before the case is set down for trial and, in other matters, at least 30 days before the date set for the hearing of the grounds raised in the notice; in addition, the notice must be accompanied by all pleadings already filed in the record. The Attorney General becomes a party to the proceeding without further formality, and can submit conclusions to the court, in which case the court must rule on them.

Only the Attorney General can waive such notice period.

The notice to the Attorney General must also be served on the Attorney General of Canada if the rule or provision concerned comes under federal

jurisdiction; it must be served on the Director of Criminal and Penal Prosecutions if the rule or provision concerned relates to a criminal or penal matter.

78. In criminal or penal matters, a notice to the Attorney General under the second paragraph of article 76 must be served at least 10 days before the date of the trial on the demand for remedy. Failing that, the court orders service of the notice and postpones the hearing, unless the Attorney General waives or the court shortens the notice period because, in its opinion, it is necessary to prevent irreparable prejudice to the person making the demand or to a third person.

Such a notice is not required if the remedy sought relates to the disclosure or exclusion of evidence or to the period of time elapsed since the accusation, or in the cases determined by order of the Minister of Justice published in the *Gazette officielle du Québec*.

79. In a proceeding involving an issue of public interest, the court, even on its own initiative, can order the parties to invite the Attorney General to intervene as a party.

The Attorney General, on the Attorney General's own initiative, can intervene as a party in a proceeding involving the public interest, without notice or formality and without having to prove an interest.

The Attorney General can appeal any judgment on an issue involving the public interest.

80. No measures to force execution are available with respect to a judgment against the Attorney General other than in accordance with the special rules for forced execution in real actions. If the judgment orders the payment of a sum of money, the Minister of Finance, on receiving the judgment once it has become final, pays the amount specified out of available appropriations or, failing that, out of the Consolidated Revenue Fund.

81. The courts cannot order a provisional remedy or a sanction against, or exercise the power of judicial review over, the Government or a minister of the Government or any person, whether or not a public servant, acting under their authority or on their instructions in a matter relating to the exercise of a function or the authority conferred on them by law. They can do so only if it is shown that there was lack or excess of jurisdiction.

TITLE V

PROCEDURE APPLICABLE TO ALL JUDICIAL DEMANDS

CHAPTER I

SITTINGS OF COURTS AND TIME LIMITS

82. The courts do not sit on Saturdays or on holidays within the meaning of section 61 of the Interpretation Act (R.S.Q., chapter I-16), nor do they sit on 26 December or 2 January, which are considered holidays for civil procedure purposes. In urgent cases, a demand can be heard on a Saturday or a holiday by the on-call judge designated by the chief justice or chief judge.

In addition, courts of the first instance are not required to sit between 30 June and 1 September, or between 20 December and 7 January. They are nevertheless required to hear cases relating to a person's personal integrity, status or capacity, family matters cases, cases concerning a labour or leasing contract, cases proceeding by default, incidental proceedings, proceedings concerning provisional remedies or control measures, non-contentious demands and proceedings incidental to the execution of judgments. If they hold a trial on the merits during such a period, they must make sure, before setting the date, that the parties and their lawyers and their witnesses, if any, can attend without any major inconvenience to themselves or their families.

In all circumstances, habeas corpus demands, demands concerning personal integrity and demands identified as urgent by law or considered urgent by the chief justice or chief judge have priority, in that order, over any other.

83. A time limit fixed by this Code, set by the court or agreed by the parties for the performance of an act or of a formality runs as of the act, event, decision or notification that gives rise to the time limit.

A time limit is counted by whole day or, if applicable, by month. If the time limit is expressed in days, the day that marks the start is not counted but the terminal day is. If the time limit is expressed in months, it expires on the day, in the last month, that bears the same calendar number as the act, event, decision or notification having given rise to the time limit; if there is no such calendar number in that month, the time limit expires on the last day of the month.

A time limit expires at 12 midnight on the last day; a time limit that would normally expire on a Saturday or a holiday is extended until the following working day.

If a time limit is five days or less, Saturdays and holidays are not counted.

84. A time limit described by this Code as a strict time limit cannot be extended unless the court is convinced that it was actually impossible for the party concerned to act sooner. If the court considers it necessary, any other time limit can be extended or, in an urgent situation, shortened by the court.

When the court extends a time limit, it can relieve a party from the consequences of failing to comply with the original time limit.

In first instance, the parties can agree on time limits other than those prescribed by this Code except in the case of strict time limits, those with which the parties must comply in the interest of the proper administration of justice and those established for the benefit of third persons.

CHAPTER II

INTEREST REQUIRED TO BRING PROCEEDINGS

85. To bring a judicial demand, a person must have a sufficient interest.

In disputes that raise an issue of public interest, the interest of the plaintiff is assessed on the basis of whether the interest is genuine, whether the issue is a serious one that can be validly resolved by the court and whether there is no other effective way to bring the issue to the court.

86. The following are considered to have an interest in a demand:

(1) the Public Curator, if the demand calls into question the capacity of a person of full age or concerns an absentee or the property of a minor;

(2) public officers or office holders, if the demand calls on them to make changes to an act or a register; and

(3) persons of full age and minors 14 years of age or older, if the demand concerns their status or capacity.

CHAPTER III

REPRESENTATION BEFORE COURTS AND CAPACITY TO ACT

87. The right to act and represent a party before the courts is reserved to lawyers. However, notaries can do so in non-contentious matters as specified in paragraph 7 of section 15 of the Notaries Act (R.S.Q., chapter N-3).

88. The following are required to be represented before the courts by a lawyer in contentious matters, and by a lawyer or a notary in non-contentious matters:

(1) representatives, mandataries, tutors or curators and persons acting on behalf of another person who, for serious reasons, cannot act on his or her own behalf;

(2) legal persons, except a legal person established for a private interest having not more than five persons bound to it by an employment contract which gives an express mandate to one of its directors to represent it;

(3) general or limited partnerships and associations within the meaning of the Civil Code, unless all the partners or members act themselves or mandate one of their number to act;

(4) the Public Curator, guardians and sequestrators;

(5) liquidators, trustees and other representatives of collective interests when acting in that capacity; and

(6) purchasers of accounts and collection agents.

89. Persons and groups, including partnerships and associations not endowed with juridical personality, can be represented by a mandatary other than a lawyer for the recovery of small claims under Title II of Book VI, in accordance with the rules of this Code.

Legal persons and groups can be represented by such a mandatary for the purpose of participating in the distribution of money derived from an execution measure.

90. Tutors, curators and other representatives of persons who are unable to fully exercise their rights act in their own name and capacity. The same applies to administrators of the property of others as regards their administration, and to mandataries as regards the fulfillment of a protection mandate.

91. Two or more persons who have a common interest in a dispute can mandate one of them to act in a proceeding on their behalf. The mandate must be mentioned in the originating demand or in the defence.

The mandators are solidarily liable with the mandatary for the judicial costs. The mandate is not affected by the death or change of status of any mandator, and cannot be revoked except with the authorization of the court.

92. An irregularity resulting from failure to be represented, assisted or authorized has no effect unless it is not remedied, and this can be done retroactively at any stage of a proceeding, even in appeal.

CHAPTER IV

DESIGNATION OF PARTIES

93. Parties are designated by their name and, if they are not acting in a personal capacity, by the capacity in which they are acting or, in the case of public office holders, by their official title if it is sufficient to identify them.

Legal persons and general or limited partnerships are designated by the name under which they were constituted or by which they identify themselves, and by their juridical form. Syndicates of co-owners and associations and other groups not endowed with juridical personality can be designated by the name

by which they are generally known; if the name of a syndicate of co-owners is not known, it can be designated by the address of the building.

94. A party whose name is unknown or uncertain is sufficiently designated by a name that clearly identifies it.

If the subject matter of the demand is a bill of exchange or other private writing, a party is sufficiently designated by the name or initials appearing on the writing.

95. If the domicile or residence of a party must be stated, but is unknown, the party's last known residence is sufficient. In the case of a legal person, a group or an office holder, the principal establishment or any other known establishment or a professional or other business address can be stated instead of the domicile.

96. A demand pertaining to the rights and obligations of the Government must be directed against the Attorney General of Québec.

A demand pertaining to the rights and obligations of a public body or of a public officer or office holder who is called on to make changes to an act or a register must be directed against the body or person concerned.

97. A demand pertaining to the rights and obligations of the heirs, legatees by particular title and successors of a deceased person must be directed against the liquidator of the succession. However, if the liquidator is unknown or cannot be identified on a timely basis, the heirs, legatees and successors can be collectively designated as a party, without specifying their names or residence.

Heirs and legatees by particular title of a person whose succession opened outside Québec who have not registered a declaration of transmission in accordance with article 2998 of the Civil Code can be sued and designated collectively in any immovable real action relating to the succession.

98. A demand pertaining to certain and determinate property must describe the property in such a manner as to clearly distinguish it from other property.

A demand pertaining to an immovable must describe the immovable in accordance with the book of the Civil Code governing the publication of rights.

CHAPTER V

PLEADINGS

DIVISION I

FORM AND CONTENT OF PLEADINGS

99. A pleading must specify its nature and purpose and state the facts on which it is based and the conclusions sought. It must also state anything which, if not alleged, could take another party by surprise or raise an unexpected debate. The statements it contains must be clear, precise and concise, presented in logical order and numbered consecutively.

A pleading must specify the court seized, the judicial district in which it is filed, the number of the record to which it relates, the names of the parties and the date of filing. If the court office can receive pleadings in technological media, the pleading must be in one of the standardized formats determined by the Minister of Justice to ensure the smooth operation of the court office.

The author of a pleading must be identified by means of the author's signature, or that which serves the purpose of a signature as provided in the Act to establish a legal framework for information technology (R.S.Q., chapter C-1.1).

100. An originating demand, whether in a contentious or non-contentious matter, is filed with the court in writing by the plaintiff or, as applicable, by the plaintiff's lawyer or notary. In addition to the names of the parties, it must set out the domicile or residence of the plaintiff and the last known residence of the other parties, and indicate, if applicable, in what capacity a person is a party to the proceeding if not in a personal capacity.

A demand in the course of a proceeding can be filed in writing or presented orally and informally; if it concerns a case management measure, if the judge so requests or if the judge and the parties so agree, it can also be put down in a note, a letter or a notice.

101. If it is in writing, a demand in the course of proceeding must state the date, time and place of presentation, and be notified to the other parties at least three days before its presentation.

It can only be contested orally, unless written contestation is authorized by the court. During the hearing, any party can submit relevant evidence.

The facts alleged are presumed to be true, but the person making the allegation can be questioned about the facts alleged that are not supported by evidence filed in the record. Such an examination is held before the hearing, as though it were a pre-trial examination; if the person refuses to submit to the examination without valid cause, the demand can be dismissed.

102. When replying to a pleading, a party must admit the allegations that it knows to be true and deny those that it does not admit, giving reasons for the denial, or state that it is unaware of the fact. To evoke an alleged fact, it is sufficient to refer to the paragraph in which it is set out.

Silence with respect to an alleged fact is not an admission of that fact.

103. In their pleadings, lawyers, notaries and court bailiffs must refer to themselves by their name, the name of their partnership or the name by which they are known. They must also state their professional address and the name and contact information of the person in their office with whom the other parties can communicate.

DIVISION II

SWORN PLEADINGS

104. Whenever the law requires that a pleading be supported by an oath, or requires or allows a sworn written statement as evidence, the oath must be sworn by the party, or by a representative or a servant of the party provided that person can attest the veracity of the facts alleged.

The pleading or statement must mention the date and place the oath is sworn or received, as well as the name and address of the person swearing the oath and the name and capacity of the person receiving it.

The person who swore the oath can be questioned concerning the facts attested; if he or she refuses to submit to such an examination without valid cause, the pleading or statement is rejected. The person who attested the facts alleged in the pleading or who made the written statement can also be so questioned if the pleading, attestation of facts or statement is deemed by law to be sworn.

105. A sworn statement or a statement deemed to be sworn must set out the facts and other evidence clearly and only contain facts or evidence that are relevant and can be sworn to by the person making the statement. A reference to the paragraphs in the pleading is sufficient to identify the facts that are sworn to. The repetition of the wording of the pleading can render the statement inadmissible.

Evidence by sworn statement is permitted when the defence is oral. It is required in the case of an interlocutory injunction, a seizure before judgment or a judicial review.

DIVISION III

FILING OF PLEADINGS AND EXHIBITS

106. Pleadings filed with the court are considered to be original documents, whatever their medium.

107. An originating demand must be filed with the court before it is notified to the other parties. The court clerk records it in the court registers, opens and assigns an identification number to the case record and writes that number on the document to be used by the party for notification purposes. All other pleadings must be filed with proof of notification and with any other required document.

Pleadings that are to be presented at the hearing, including the originating demand, must be filed with the court at least two days before the date of presentation, except in an emergency.

No originating demand can be set down for trial or judgment unless the plaintiff has first filed proof of notification; an originating demand expires if it is not notified within three months after it is filed.

Pleadings on technological media filed outside court office hours are deemed to have been filed the following day, at opening time. In an urgent situation, the filing of a pleading outside court office hours can be attested by the court clerk.

To be considered received, a pleading must be filed with the prescribed costs and court fee, if any.

108. Any exhibit that is produced and filed in the record must remain in the record until the end of the proceeding, unless all parties consent to its being removed. The parties must see to it that exhibits that contain identifying particulars generally held to be confidential are filed in a form that protects the confidentiality of the information.

Once the proceeding has ended, the parties must retrieve the exhibits they have filed; otherwise, they are destroyed by the court clerk one year after the date on which the judgment becomes final or the date of the act terminating the proceeding. In either case, the chief justice or chief judge, if of the opinion that the exhibits can still be useful, can stay their destruction.

Exhibits filed in matters susceptible of review or reassessment and, in non-contentious matters, notices, certificates, returns, minutes, inventories, statements, declarations and documents rendered enforceable by a judgment cannot be removed from the record or destroyed.

CHAPTER VI

NOTIFICATION OF DOCUMENTS

DIVISION I

GENERAL RULES

109. The purpose of notification is to bring an originating demand or any other pleading or document to the attention of the persons concerned.

If the law so provides, documents must be notified by bailiff, in which case the notification is also called service.

In other cases, documents can be notified by bailiff or by mail or courier service, or by public notice or by any other appropriate means that provides the sender with proof of delivery or sending. However, if no such proof is required, documents can be notified by any means of communication.

Whatever the mode of notification used, a person who acknowledges receipt of the document or admits having received it is deemed to have been validly notified.

A document intended for two or more addressees must be notified to each separately.

110. If required by the circumstances, the court, following an informal request, can authorize a pleading to be notified otherwise than as provided for in this chapter; in such a case, the court determines how notification is to be proved. The decision of the court is recorded on or attached to the pleading.

The authorization of the court can be obtained in the district where the document is to be notified, the district of the court that is seized of the matter or the district of the notifying party's residence or, for the notification of a notice of appeal, in the district where the judgment of first instance was rendered.

In notification matters, the court clerk can exercise the powers conferred on the court.

111. Documents can be notified by bailiff or by courier service between 7 a.m. and 9 p.m. on any day except holidays. No documents can be notified between lawyers, notaries, bailiffs and parties representing themselves on Saturdays, on holidays or after 4:30 p.m. except with their consent.

A document notified by a technological means on a Saturday, on a holiday or after 5 p.m. is deemed to have been notified at 8 a.m. on the next working day.

DIVISION II

NOTIFICATION BY BAILIFF

§1.—*General provisions*

112. Notification by bailiff consists in handing the documents to the addressee personally or, if this cannot be done, in leaving it at the addressee's domicile with a person who is fit to receive it. If the document is not handed personally to the addressee or left at the addressee's domicile, it must be left at a suitable place in a sealed envelope or in any other form that protects its confidentiality.

The bailiff must sign and stamp the document being served and record the date and time of service on it.

If the person to whom a document is addressed refuses to accept its delivery, the bailiff records the refusal on the document and in the certificate of service. The document is deemed to have been served personally at the time of the refusal. The bailiff must leave the document on the premises by any appropriate means.

113. A bailiff can serve a document anywhere in Québec. If there is no bailiff firm in a radius of 75 kilometres from the place of service, the document can either be served by a person of full age residing within that radius and designated by the bailiff to act in his or her name and under his or her authority, or notified by any other means best allowing the addressee to be reached. In the latter case, the document must be delivered to the addressee in exchange for an acknowledgment of receipt.

When service is required by law, the only professional fees and costs that can be charged by the bailiff are those chargeable under the regulation under the Court Bailiffs Act (R.S.Q., chapter H-4.1).

114. A document can be served even if another mode of notification is permitted by law; no additional cost above the cost of notification by mail can be charged to the addressee, however, unless the addressee has rendered service necessary or service has been authorized by the court.

115. Proof of service is evidenced by a certificate of service drawn up by the bailiff under his or her oath of office.

The certificate of service must mention

- (1) the court record number and the names of the parties;
- (2) the nature of the document;
- (3) the place, date and time of service;

(4) the name of the person to whom the document was delivered and, if not the addressee, the person's capacity or, as applicable, the place where the document was left;

(5) if applicable, the addressee's refusal to accept delivery of the document; and

(6) the amount of professional fees and costs.

The bailiff can correct a clerical error in the certificate of service at any time before it is filed with the court.

116. If a document is served by a person designated by a bailiff, the person draws up a certificate of service, stating his or her name, address and capacity. The certificate must be supported by an acknowledgement of receipt given by the person who received delivery of the document, unless he or she refuses to do so, in which case this is recorded in the certificate of service.

On inspection of the certificate drawn up, after an unsuccessful attempt to serve the document, by the person designated by the bailiff, the court can authorize notification by any means appropriate in the circumstances. The authorization is recorded on the certificate and on the document to be notified.

§2.—Notification by personal service

117. An originating demand must be served on the addressee personally if the addressee is 14 years of age or older and the demand pertains to his or her personal integrity, status or capacity, or if the demand pertains to homologation of a protection mandate and the addressee is the mandator. The same applies if the addressee is summoned to appear on a contempt of court charge or is imprisoned or otherwise confined against his or her will, or if the addressee's identity is unknown or uncertain.

118. If the parties reside together, notification of documents by one party to the other must be by personal service, unless they have agreed together to another mode of notification.

119. If there is a risk that personal service could worsen the addressee's physical or psychological condition, the court can authorize the delivery of the document, in a form that protects its confidentiality, to an authorized person within the health or social services institution or to the person having charge of the premises where the addressee is, or to any other person designated by the court.

By way of exception, the court, if it considers that the notification of a demand for the confinement of a person in a health or social services institution for a psychiatric assessment or following a psychiatric assessment would be

harmful to the health or safety of the person concerned or of another person, or in an urgent situation, can exempt the demand from notification.

§3.—*Notification through intermediary*

120. A document is notified to a natural person at his or her domicile or residence by leaving it in the care of a person who resides or works there and appears to be fit to give the document to the addressee; if this cannot be done, the document can be notified by leaving it in the care of a person having charge of the premises at the addressee's business establishment or place of work, or by leaving it at the addressee's elected domicile or with a person designated by the addressee.

If the addressee's place of work is a means of transportation such as a ship, an airplane or a bus, the document can, if need be, be notified by a technological means.

121. A document is notified to a legal person or an enterprise at its head office or, if the head office is outside Québec, at one of its establishments in Québec, by leaving it in the care of a person who appears capable of giving the document to an officer or director of the legal person or enterprise or to one of the agents of the legal person or enterprise. It can also be handed personally to one of its officers, directors or agents, wherever that person may be.

A document is notified to a general or limited partnership, to an association or to a group not endowed with juridical personality at its business establishment or office. It can also be handed personally to one of its partners, members or officers, wherever that person may be.

A document is notified to a trustee, the liquidator of a legal person or enterprise or a trustee in bankruptcy at his or her domicile or place of work, either personally or by leaving the document in the care of a person who appears capable of giving the document to the person concerned.

122. A document is notified to the Attorney General of Québec at the Québec or Montréal office of the director of the legal department of the Ministère de la Justice by leaving it in the care of the person having charge of the premises.

123. A document is notified to the liquidator of a succession in the same manner as to any other natural person. If the liquidator is unknown or resides outside Québec, the document can be notified to one of the heirs.

A document is notified to heirs and legatees by particular title collectively designated as a party by leaving it at the last domicile of the deceased; if that domicile is outside Québec or is closed or if no member of the deceased's family is to be found there, the document is notified to one of the heirs or legatees by particular title.

124. A document can be notified by leaving it with a person designated by the addressee or at the addressee's elected domicile; if the addressee has no domicile, residence or business establishment in Québec, a document can be notified by leaving it with the firm of the lawyer representing the addressee.

§4.—*Notification in place*

125. A bailiff who has been unable to deliver a document to the addressee or to an intermediary leaves a notice, in a sealed envelope, at the addressee's residence or business establishment, informing the addressee of the unsuccessful delivery attempt and specifying the nature of the document, the notifying party's name and the place where the addressee can take delivery of the document.

The notice can be left in the addressee's mailbox or in a place accessible only to the addressee or, failing that, in a place where it will be plainly visible. It can instead be left in the care of the owner, administrator or manager of the building. In all cases, the owner, administrator or manager is required to co-operate and give the bailiff access to an appropriate place to leave the notice.

Alternatively, the notice can be sent by a technological means.

126. A pleading cannot be notified in a public place of worship, a courtroom or a hearing room of an administrative tribunal, nor can a pleading be notified to a Member of the National Assembly in the Assembly chamber or a committee room.

DIVISION III

OTHER MODES OF NOTIFICATION

§1.—*Notification by mail or by courier service*

127. Notification by mail is the sending of a document to the last known residential address of the addressee; if the addressee's place of residence is unknown, the document can be sent to the addressee's known work address. A sending is considered to be by registered mail if the delivery or receipt of the document is recorded.

Notification by courier service is the delivery of a document to the addressee or to the addressee's representative according to the instructions of the notifying party.

128. Proof of notification by registered mail or by courier service is evidenced by the delivery notice or the receipt notice presented by the letter carrier or the courier at the time of delivery. Failing that, proof of notification is evidenced by the sender's declaration that the document was sent, with a reference to its delivery or receipt status.

A document is deemed to have been notified on the date on which the receipt notice was signed by the addressee or an intermediary capable of receiving notification or, as applicable, on the date of the delivery notice.

§2.—*Notification by public notice*

129. Notification by public notice is by order of the court. Notification by public notice can also be used by a bailiff who has tried unsuccessfully to serve a pleading or document and has recorded that fact in the certificate of service.

130. Notification by public notice is the publication of a document or a summary of a document in any medium by which the person concerned can be reached, such as on a website recognized by an order of the Minister of Justice or its publication in, or on the website of, a newspaper circulated in the municipality of the person's last known address or the municipality where the immovable that is the subject of the dispute is situated.

A document published on a website must appear for at least 30 days, whereas a document published in hard copy in a newspaper can appear only once, in French; however, if required by the circumstances, the court can order that a document be published in a newspaper more than once or that it be also published in English.

A public notice concerning an originating demand must direct the defendant to take delivery of the demand at the court office within 30 days or any other time specified, and must mention the court order or the fact that the publication was requested by the bailiff.

131. Proof of notification by public notice is evidenced by the filing with the court of a relevant extract from the published document, showing the date and the mode or place of publication.

Notification by public notice is deemed to have taken place on the first day of publication.

§3.—*Notification by technological means*

132. Notification by a technological means is the sending of a document to the address identified by the addressee as the address where the addressee agrees to receive documents, or to the address that the addressee publicly represents as the address where the addressee agrees to receive documents, provided the address is active at the time of sending.

However, notification of a document by a technological means to a party that is not represented by a lawyer or a notary is permitted only with the consent of that party.

133. Proof of notification by a technological means is evidenced by a transmission slip or, failing that, by a sworn statement of the sender.

The transmission slip must set out the nature of the document, the court record number, the names and contact information of the sender and the addressee, and the place, date and precise time of sending; it must also contain the information needed to verify that the entire document was sent. The transmission slip is filed with the court only if a party so requests.

§4. — *Notification to correspondent*

134. In a proceeding, a document can be notified to a correspondent, whether a lawyer, notary or bailiff, or to a party itself, by handing it personally to the person, by a technological means or by any other means agreed to in the case protocol.

DIVISION IV

NOTIFICATION OF CERTAIN PLEADINGS

135. An originating demand, except one governed by Title II of Book VI, must be notified by bailiff. The same applies to other pleadings required to be served under this Code or another law.

Documents that must be notified by bailiff include

- (1) witness subpoenas;
- (2) cross-demands and intervention statements;
- (3) judgments granting an injunction or containing any other order to do or not do something; and
- (4) notices of appeal and applications for the revocation of a judgment.

However, a demand that impleads the Public Curator, the Director of Civil Status, the Registrar or the Agence du revenu du Québec can be notified to them otherwise than by service.

136. An originating demand must be notified to the defendant and to the other parties. Notification of an originating demand is valid only if the document is certified by the notifying party, its lawyer or the bailiff as being a true copy of the document filed with the court.

All other pleadings by a party must be notified to the lawyers or, as applicable, notaries of the other parties, or to the parties themselves if they are not so represented. They can be certified as true copies on request.

If the notified document is not a true copy of the document filed with the court, the notifying party can notify a new document, with or without leave of the court depending on whether the party that received the document has replied or not.

137. The notifying party must, on request, let another party inspect the original or the document held by the notifying party. If the notifying party refuses or neglects to do so, the other party can seek a court order requiring compliance within the time specified by the court.

BOOK II

CONTENTIOUS MATTERS

TITLE I

INITIAL STAGES OF PROCEEDING

CHAPTER I

JUDICIAL DEMAND

138. In contentious matters, a judicial demand, which originates a proceeding, is conducted as set out in this Book, subject to the special rules in Book V relating to certain civil matters and to the rules in Book VI relating to special proceedings.

Even in the absence of a dispute, a demand may seek, in order to resolve a genuine problem, a declaratory judgment determining the status of the demanding party or a right, power or obligation conferred on the demanding party by a juridical act.

139. Two or more subject matters or claims can be joined in the same demand, provided the conclusions sought are compatible. In family matters, the conclusions sought can relate both to provisional and ancillary measures and to the principal demand.

Two or more plaintiffs can join their claims and the conclusions they are seeking in the same demand if they have the same juridical basis, are grounded on the same facts or raise the same points of law or if circumstances permit. If they agree on the facts, they can confine the demand to the issue of law which is likely to cause a dispute between them.

140. A plaintiff cannot divide a debt that is due for the purpose of claiming payment of its several portions in different demands.

CHAPTER II

SUMMONS AND DEFENDANT'S ANSWER

141. The plaintiff summons the defendant before justice by means of a summons attached to the demand. The summons includes a list of the exhibits in support of the demand and informs the defendant that they are available on request.

The defendant must answer the demand within the following 15 days, failing which a default judgment can be granted and costs awarded against the defendant.

142. The summons must be in the form established by the Minister of Justice.

The summons states that the defendant must collaborate with the plaintiff in establishing the case protocol that is to govern the conduct of the proceeding; it also specifies the sanction that can be imposed on the defendant for failure to answer the demand within 15 days after service of the summons.

As well, the summons mentions that the defendant can contact the court to request that the demand be processed according to the rules of Title II of Book VI relating to the recovery of small claims, provided the defendant would qualify to act as plaintiff under those rules. The summons further states that if the defendant requests that the demand be so processed, the plaintiff's legal costs will not exceed those prescribed for the recovery of such claims.

143. In the answer to a demand, the defendant states that the defendant will either agree to a settlement or defend the demand and establish a case protocol with the plaintiff. The defendant can also suggest mediation or a settlement conference. If the defendant is represented by a lawyer, the answer must also include the lawyer's name and contact information. The answer is notified to the plaintiff or the plaintiff's lawyer, and filed with the court identified in the summons.

CHAPTER III

CASE MANAGEMENT

DIVISION I

CASE PROTOCOL

144. The parties must collaborate to either arrive at a settlement or establish a case protocol. The case protocol sets out the parties' agreements and undertakings, and defines the issues in dispute. It assesses whether a settlement conference would be appropriate, describes the steps to be taken to ensure the orderly progress of the proceeding, assesses the time these steps will require, appraises the foreseeable legal costs, and sets the deadlines to be met within the strict time limit for trial readiness.

The case protocol covers such aspects as preliminary exceptions and safeguard measures as well as the procedure and time limit for pre-trial discovery and disclosure. It includes admissions and provides for the disclosure of exhibits and other evidence and the use of written statements in lieu of testimony. It assesses the necessity of seeking expert opinion on one or more matters, explains the nature of the opinion sought and states the reasons for which the parties do not intend to jointly seek expert opinion, if that is the case.

It also assesses the necessity of conducting pre-trial written or oral examinations and specifies their anticipated number and length. It states that an extension of the time limit for trial readiness will be necessary if that is so. It describes foreseeable incidental demands and, if a written defence proves necessary, sets a time limit for filing the defence.

145. The case protocol agreed between the parties' lawyers must be notified to the parties unless they have signed it.

It must be filed with the court within 45 days after service of the summons or, in family matters, within three months after service of the summons.

The court examines the case protocol within 15 days after it is filed and notifies the parties either that a case management conference will not be necessary or that they will be convened to a case management conference to be held within 20 days after the notification.

146. The case protocol is binding on the parties, who must each comply with it under pain, among other sanctions, of paying the legal costs incurred by the other parties or by third persons as a result of their failure to comply.

147. An impleaded person can participate in the establishment of the case protocol. An impleaded person who chooses to do so must notify the parties within 15 days after notification. An impleaded person who chooses not to do so is presumed to accept the case protocol established by the parties.

A person added as a party in the course of a proceeding must, within 15 days, propose terms for participation in the proceeding, taking into account the existing case protocol. Failing agreement with the other parties, the person can ask the court to set those terms and modify the case protocol accordingly.

148. If a party fails to collaborate in the establishment of a case protocol, the other party files a proposal within the time limit for filing. If the differences between the parties are such that they cannot agree on a case protocol, the plaintiff files a proposal within the time limit for filing, stating the points on which the parties differ.

DIVISION II

CASE MANAGEMENT CONFERENCE

149. At the case management conference convened on its own initiative or on request, the court acquaints itself with the facts and legal issues in dispute, examines the case protocol, discusses it with the parties and takes the appropriate case management measures.

The court, if it considers it appropriate, can require undertakings from the parties concerning the continuation of the proceeding, or subject the proceeding to certain conditions. If a party is absent without valid reason, the court can

hear the party that is present if the latter is ready to proceed, or note the default and return the case to the court office to be set down for judgment.

150. A party that has preliminary exceptions to assert must notify a statement to the other party and file it with the court at least three days before the scheduled management case conference date.

151. At the case management conference, the court can hear the parties on the preliminary exceptions or postpone the hearing of preliminary exceptions to a specified later date, hear a brief statement by the defendant of the grounds for defence, which are recorded in the minutes of the hearing, and try the case immediately if the defence is to be oral and the parties are ready to proceed, or order the court clerk to set the case down for trial.

Preliminary exceptions are presented and contested orally, but the court can authorize the parties to submit the appropriate evidence.

152. If the trial takes place on the same day as the case management conference, the parties prove their cases by means of written sworn statements if the law so requires or allows. They can also present any other evidence, be it oral or documentary.

153. By way of exception, if it is shown to the court that the demand is of a conservatory nature, that a settlement is likely and that the effort required to prepare the case for trial would be pointless or disproportionate in the circumstances, the court can stay the proceeding for the time it determines. It can lift the stay on a party's request if it considers that the grounds for the stay no longer exist.

DIVISION III

SPECIAL CASE MANAGEMENT

154. Given the nature, character or complexity of a case, the chief judge or chief justice can order case management to ensure the orderly progress of the proceeding as soon as it is instituted and even before the case protocol is filed.

The chief judge or chief justice can, for the same reason, on his or her own initiative or on request, order special case management at any time and assign a judge as special case management judge. The special case management judge is responsible, throughout the proceeding, for disposing of all incidental demands, convening a trial management conference if expedient, and issuing such orders as are appropriate, unless another judge is temporarily assigned because the special case management judge is unable to act. The special case management judge can also be assigned to preside over the trial and adjudicate on the merits of the principal demand.

DIVISION IV

CASE MANAGEMENT MEASURES

155. For case management purposes, at any stage of a proceeding, the court can decide, on its own initiative or on request, to

(1) take measures to simplify or expedite the proceeding and shorten the trial by ruling, among other things, on the advisability of ordering the consolidation or separation of proceedings or the splitting of the proceeding, of better defining the issues in dispute, of amending the pleadings, of limiting the length of the trial, of admitting facts or documents or of determining the procedure and time limit for the disclosure of exhibits and other evidence between the parties, or by convening the parties to a case management conference or a settlement conference or encouraging them to use mediation;

(2) determine terms for the use of expert evidence, whether joint or not, assess the purpose for and usefulness of seeking expert opinion as well as the anticipated costs, set a time limit for submission of the expert's report and, if the parties failed to agree on joint expert evidence, appreciate the merits of their reasons and order joint expert evidence regardless, if necessary to uphold the principle of proportionality;

(3) determine the number and length of and other conditions relating to pre-trial examinations, if such examinations are required;

(4) order notification of the demand to persons whose rights or interests may be affected by the judgment or invite the parties to bring a third person in as an intervenor or to implead a third person if the court considers that the third person's participation is necessary in order to resolve the dispute or, in status, capacity or family matters, order the production of additional evidence;

(5) dispose of any requests made by the parties, modify the case protocol or authorize or order such provisional or safeguard measures as it sees fit;

(6) order an oral defence if it considers that the absence of a written defence will not cause prejudice to the parties, or authorize the filing of a written defence if it has been shown to be necessary; or

(7) extend the time limit for trial readiness.

Safeguard orders issued in urgent cases or on the postponement of the hearing lapse six months after they are issued, unless extended by the parties by mutual agreement, or by the court.

The court's decisions are recorded in the minutes of the hearing and are considered to be part of the case protocol. Unless reviewed, they govern the conduct of the proceeding.

156. If the court considers it necessary that a minor be represented in order to safeguard his or her rights and interests, it can, at any time, even on its own initiative, order the appointment of a lawyer, rule on the lawyer's fee and determine who will be responsible for its payment.

The court can do the same for an incapable person of full age who is not represented by a tutor, a curator or a mandatary. It can, on its own initiative, order notification of the demand to the Public Curator.

In all cases where the representative of a minor or of an incapable person of full age has an interest adverse to that of the minor or incapable person, the court, even on its own initiative, can appoint a tutor or curator ad hoc to ensure proper representation of the minor or incapable person.

CHAPTER IV

SETTLEMENT CONFERENCE

157. At any stage of a proceeding, the chief justice or chief judge can assign a judge to preside over a settlement conference if the parties so request, briefly stating the issues in dispute, or if the chief justice or chief judge recommends that a settlement conference be held and the parties concur.

The duty of presiding over the settlement conference falls within the conciliation mission of judges.

158. The purpose of a settlement conference is to facilitate dialogue between the parties so that they may better understand and assess their respective interests, positions and claims, and to facilitate negotiation so that they can resolve the dispute in a mutually satisfactory manner.

159. A settlement conference is held in the presence of the parties, and, if the parties so wish, in the presence of their lawyers. It is held in private, at no cost to the parties and without formality.

The settlement conference does not suspend the proceeding, but the judge presiding over the settlement conference can, if necessary, modify the case protocol accordingly.

Anything said, written or done during the settlement conference is confidential.

160. In agreement with the parties, the judge presiding over a settlement conference determines the schedule of meetings and defines the rules that are to apply to the settlement conference and any measure to facilitate its conduct.

The rules can, among other things, allow the judge to meet with the parties separately and allow other persons to take part in the settlement conference if it is considered that their presence would be helpful in resolving the dispute.

The parties must ensure that the persons who have authority to transact are present at the conference or that they may be reached in a timely manner to give their consent.

161. If a settlement is reached, the judge who presided over the settlement conference can homologate the settlement on request.

If no settlement is reached, the judge can take the appropriate case management measures or, with the parties' consent, convert the settlement conference into a case management conference. The judge cannot, however, subsequently try the case or determine any incidental demand.

CHAPTER V

DEFENCE

DIVISION I

PRELIMINARY EXCEPTIONS

§1.—*Declinatory exception*

162. If a demand is brought before a court other than the court of competent jurisdiction, the defendant can ask that it be referred to the competent court or, failing that, that it be dismissed.

Lack of subject-matter jurisdiction can be raised at any stage of the proceeding, and can even be declared by the court on its own initiative, in which case the court adjudicates as to legal costs according to the circumstances.

§2.—*Exception to dismiss*

163. The defendant can ask that the demand be dismissed if

- (1) there is *lis pendens* or *res judicata*;
- (2) one of the parties is incapable or does not have the necessary capacity to act; or
- (3) the plaintiff clearly has no interest.

The defendant can also ask that the demand be dismissed if it is unfounded in law whether or not the facts alleged are true. Such an exception can apply to only part of the demand.

The plaintiff can be allowed a period of time to correct the situation. If, on the expiry of the time allowed, the correction has not been made, the demand is dismissed.

The dismissal of a demand can be urged even if the exception to dismiss was not raised before the case management conference.

§3.— *Other exceptions*

164. The defendant can ask the court to take any measure conducive to the orderly progress of the proceeding.

The defendant can also, for the purposes of the defence, ask the court to order the plaintiff to clarify allegations made in the demand or to disclose a document to the defendant, or ask for the striking of immaterial allegations.

DIVISION II

DEFENCE ON MERITS

165. To defend a demand is to raise grounds of law or fact showing that the conclusions sought by the plaintiff should be granted neither in whole nor in part; the defence joins the issues between the parties. The defence can allege any material facts, even material facts that have arisen since the institution of the demand, and can advance any conclusions necessary to defeat a ground set up by the other parties.

If the defence is oral, the arguments raised are recorded in the minutes or in a brief point-form outline attached to the minutes. If the defence is written, it is set out in a pleading.

A declaration that one submits to justice is not a defence nor is it acquiescence in the claims of another party.

166. The defendant can, in the defence, make a cross-demand against the plaintiff to assert a claim arising from the same source as the principal demand or from a related source. The court remains seized of the cross-demand despite discontinuance of the principal demand.

The defence of a cross-demand is to be oral in all instances, unless the court requires that it be written.

167. The defence is to be oral in all instances where the case does not present a high level of complexity or it is desirable that the case be decided promptly. The defence is to be oral, for example, in all instances where the purpose of the proceeding is to obtain support or a right relating to the custody of a child, to obtain the surrender of property, an authorization, a designation, a homologation or the recognition of a decision, or where its subject matter is

the manner in which an office is to be performed or the sole determination of a sum of money due under a contract or as reparation for proven prejudice.

A cross-demand is also to be oral in such instances.

CHAPTER VI

READINESS FOR TRIAL AND SETTING DOWN FOR TRIAL AND JUDGMENT

168. Within six months after receipt of a notice stating that a case management conference is not to be convened or within six months after the case management conference, the plaintiff must ensure that the case is ready for trial and that it is set down for trial and judgment. The six-month time limit is a strict time limit. In family matters, the time limit is one year.

Nevertheless, the court can extend the time limit at the case management conference if warranted by the complexity of the case or by special circumstances. The court can even extend it before the expiry of the strict six-month time limit if the parties show that it was in fact impossible, at the time of the case management conference, to adequately assess how long they would need to prepare the case for trial, or that circumstances unforeseeable at that time have since occurred. The new time limit set by the court is also a strict time limit.

If the parties or the plaintiff have not filed a case protocol or a proposed case protocol within the prescribed 45-day or three-month time limit for doing so, the six-month or one-year time limit under this article is computed from service of the demand. In such an instance, the court cannot extend the latter time limit unless it was impossible for one of the parties to act before its expiry.

169. A case is ready for trial and judgment when the issues are joined as to the principal demand and any cross-demand, and a request for setting down for trial and judgment can be made as soon as the case is so ready.

If the defence is to be written, the request for setting down is made by the parties or by one of them; if the defence is to be oral and the case was not heard at the case management conference, the case is set down by the court clerk on an order of the court.

170. A request for setting down is made by means of a joint declaration by the parties stating that the case is ready for trial and containing

- (1) the name of each party and, if applicable, the name of each party's lawyer, as well as their contact information;
- (2) a list of the exhibits and other evidence disclosed between the parties;

(3) a list of the witnesses each party intends to call and a list of those whose testimony is intended to be presented in the form of sworn statements, except if there is reasonable cause not to disclose their identities;

(4) a list of admissions;

(5) a list of the points submitted to experts;

(6) an estimate of the length of the trial; and

(7) the particulars of each of the conclusions sought.

If the declaration cannot be made by the parties jointly, the plaintiff files a declaration and notifies it to the other parties. The plaintiff's declaration is deemed confirmed unless the other parties specify, within five days after it is filed, what should, in their opinion, be added or deleted.

171. If the defendant fails to answer the summons, the court clerk sets the case down for judgment on a simple request by the plaintiff. If the defendant fails to attend the case management conference or to file a defence within the time limit set in the case protocol, the court clerk sets the case down for judgment on an order of the court.

In all instances, the plaintiff must file the exhibits and the plaintiff's own sworn declaration with the court.

172. If the plaintiff in the principal demand fails to have the case set down within the strict time limit, the demand is presumed to be discontinued. In such an instance, any cross-plaintiff can request that the cross-demand be set down within 30 days after the expiry of the time limit.

The court can relieve the plaintiff from the sanction if it is satisfied that it was impossible for the latter to act within the time limit. In such an instance, the court modifies the case protocol and sets a new time limit, which cannot be extended.

173. A premature or irregular request for setting down a case can be cancelled by the court or the court clerk, on their own initiative. A request made after the expiry of the time limit prescribed by law or set by the court is inadmissible.

174. Unless a trial date has been set by the court or with the consent of the parties, a notice of the trial date is notified by the court clerk to the parties and their lawyers. The notice is notified at least one month but not more than two months before the trial date, unless the parties agree to a shorter notice period. The notice is presumed to have been received if the court clerk's register shows that it was notified.

The fact that a party did not receive the notice is not grounds for postponing the trial if the party's lawyer received it.

CHAPTER VII

PRE-TRIAL CONFERENCE

175. Once a case has been set down for trial, the judge who is to preside over the trial or any other judge assigned by the chief judge or chief justice, on his or her own initiative or on request, can convene the lawyers to discuss appropriate means of simplifying and shortening the trial.

The lawyers must, on the judge's request, provide any exhibits or other evidence not already filed in the record that they intend to produce as evidence during the trial.

The agreements and decisions made during the pre-trial conference are recorded by the judge in the minutes of the conference and are binding on the parties during the trial.

CHAPTER VIII

PROCESSING OF CASE SET DOWN FOLLOWING DEFENDANT'S DEFAULT

176. If a case has been set down on account of the defendant's failure to answer the summons, the plaintiff can obtain judgment without further delay or notice. However, if the defendant is the Attorney General, the plaintiff must give the Attorney General at least one month's notice that the case is to be set down for judgment.

If a case has been set down on account of the defendant's failure to attend the case management conference without valid cause or to file a defence within the time limit set in the case protocol, the defendant must be given at least five days' advance notice before the case proceeds to trial.

177. In default proceedings, the special clerk can render judgment if the sole subject matter of the demand is the price of a service contract or the sales price of movable property; the special clerk can also render judgment if the demand is for payment of an amount of money clearly stated in an authentic act or private writing.

The special clerk renders judgment without hearing witnesses, on the face of the demand and the documents supporting the plaintiff's claims. The special clerk can refer the demand to the court if he or she considers it necessary. The special clerk can also validate any seizure before judgment in the proceeding.

178. When an evidence hearing is necessary, the whole of the evidence can be adduced in the form of written sworn statements.

During the evidence hearing, the defendant cannot produce witnesses but can cross-examine any witnesses called by the plaintiff. The witnesses can also be questioned by the judge in chambers or by the special clerk, if the judge or clerk considers such questioning useful and the parties consent. A deposition given during an examination is sound-recorded, unless waived by the parties.

179. If there are two or more defendants but only one or some are in default, the plaintiff can proceed first against those in default and request that the case be set down for judgment, after giving notice to all who are party to the case protocol. However, if the court is of opinion that the dispute requires a uniform decision for all the defendants, whether because of the subject matter of the demand or in order to avoid conflicting judgments, it orders the proceeding to continue against all of them in accordance with the case protocol.

TITLE II

INCIDENTAL PROCEEDINGS

CHAPTER I

INTERVENTION OF THIRD PERSONS IN PROCEEDING

DIVISION I

GENERAL PROVISION

180. Intervention is either voluntary or forced.

Intervention is voluntary when a person who has an interest in a proceeding but is not a party or whose participation in a proceeding is necessary in order to authorize, assist or represent an incapable party intervenes in the proceeding as a party. It is also voluntary when a person asks to intervene in a proceeding solely to contribute to the debate during the trial.

Intervention is forced when a party impleads a third person to intervene in a proceeding in order to allow the full resolution of the dispute or the execution of the judgment against the third party. It is also forced when a party intends to assert a demand in warranty against a third person.

DIVISION II

VOLUNTARY INTERVENTION

181. Voluntary intervention is termed aggressive when the third person seeks to be acknowledged as having, against the parties or one of them, a right which is in dispute. It is termed conservatory when the third person wishes to be substituted for one of the parties in order to represent it, or to be joined with

one of the parties in order to assist it or support its claims. A third person is said to intervene as a friend of the court when the sole purpose of the intervention is to contribute to the debate during the trial.

A third person intervening in a proceeding for aggressive or conservatory purposes becomes a party to the proceeding.

182. A third person who wishes to intervene in a proceeding for conservatory or aggressive purposes must notify an intervention statement to the parties, setting out the third person's interest in the case and claims, the conclusions sought and the facts justifying them. The intervention statement must also propose terms for the intervention with due regard for the case protocol.

The parties have 10 days to notify their opposition to the intervention to the third person and the other parties. If there is no opposition to the intervention, the third person's interest is presumed to be sufficient and the proposed terms to be accepted on the filing of the intervention statement with the court. If there is opposition to the intervention, the third person presents the intervention statement before the court in order to obtain a ruling on the interest in the proceeding and the terms of the intervention.

183. A third person who wishes to participate in the debate during a trial must obtain authorization from the court. The third person must file an intervention statement setting out the purpose of and grounds for the intervention and notify it to the parties at least five days before the date scheduled for presentation before the court of the request for authorization.

After hearing the third person and the parties, the court can grant authorization if it is of the opinion that the intervention is useful; in making its decision, the court considers the importance of the issues in dispute, particularly with respect to the public interest, and the relevance of the third person's contribution to the debate.

DIVISION III

FORCED INTERVENTION

184. A forced intervenor is impleaded by service of an intervention statement setting out the grounds for the intervention, together with the judicial demand. The intervention statement proposes terms for the intervention with due regard for the case protocol.

The impleading of a third person in the course of a proceeding is done in the same manner.

185. When the purpose of a forced intervention is to call a third person in warranty, the warranty is termed simple if the plaintiff in warranty is being sued as personally liable. The warranty is termed legal if the plaintiff in warranty is being sued as the holder of a thing.

A third person called in simple warranty cannot take up the defence of the plaintiff in warranty, but can choose to contest the claim asserted against the latter.

A third person called in legal warranty can take up the defence of the plaintiff in warranty and the latter can ask to be relieved from defending. In order to preserve their rights, the plaintiff in warranty, although relieved from defending, can remain in the proceeding and the principal plaintiff can require that the plaintiff in warranty remain in the proceeding. A judgment rendered against the legal warrantor is enforceable against the plaintiff in warranty after it is notified to the latter.

186. The principal demand and the demand in warranty are joined in a single proceeding and, unless separated by the court, are subject to the same case protocol, which is revised to take the demand in warranty into account. The demands are tried together and a single judgment decides them both.

CHAPTER II

INCIDENTAL PROCEEDINGS RELATING TO PARTIES' LAWYERS

187. A party's lawyer can be disavowed in the course of a proceeding and the acts performed by the lawyer beyond the scope of his or her mandate, repudiated. A demand to that effect is brought by the party or by a specially mandated lawyer and is notified to the disavowed lawyer and the other parties.

After judgment, a disavowal must be instituted by means of an originating demand. Execution of the judgment is not stayed unless the court so orders.

If the disavowal is held to be well-founded, the lawyer ceases to represent the party, the repudiated acts are annulled and the parties, restored to their former state.

188. If, before a case is taken under advisement, the lawyer of one of the parties withdraws, dies or becomes disqualified from practising as a lawyer, a formal notice must be given to the party to appoint another lawyer or send the other parties a notice of intention to self-represent. The party must answer the formal notice within 10 days after its notification. No pleading can be filed or judgment rendered during that time.

If the party does not appoint a new lawyer, the proceeding continues as though the party were not represented. If the party does not comply with the case protocol, any plaintiff in the case can ask that the case be set down for judgment and any defendant in the case, that the demand be dismissed.

A party represented by a lawyer is deemed to have been informed of another party's lawyer's death, disqualification or appointment to a public office that

is incompatible with practice as a lawyer, without notification of the death, disqualification or appointment being necessary.

189. On a party's request, a lawyer can be declared disqualified to act in a proceeding, as when the lawyer is in a conflict of interest situation and does not take steps to remedy it, has disclosed or will be required to disclose confidential information to another party or a third person, or is called as a witness in the proceeding on material facts. In the latter case, the lawyer can only be declared disqualified for serious cause.

190. A lawyer who wishes to cease representing a party can do so if he or she notifies the party, the other parties and the court clerk before a trial date has been set.

If a trial date has been set, the lawyer cannot cease representing the party, nor can another lawyer be brought in as a substitute, without the authorization of the court.

191. If parties joined as plaintiffs in a proceeding are represented by the same lawyer, the court, to avoid genuine problems and to ensure that justice is done, can adjourn the trial until each of the parties has appointed a new lawyer or filed a notice of intention to self-represent.

CHAPTER III

CONTINUANCE OF PROCEEDING

192. A proceeding is not delayed because a party has had a change of status, has ceased to exercise certain functions or has died.

However, the court can extend the strict time limit for trial readiness so that interested persons can continue the proceeding or be given a formal notice to do so. In such a case, the proceeding is stayed for the time specified by the court.

193. A lawyer who learns of the change of status, death or cessation of functions of the party he or she is representing is required to notify this information to the other parties.

Pleadings filed before the notification are valid. Those filed after the notification are without effect, except conservatory ones intended to preserve the rights of the persons likely to continue the proceeding.

194. A proceeding can be continued by a person who, as a result of a party's change of status or capacity or loss of capacity, has acquired the capacity and the interest required to do so.

A proceeding can also be continued by the person succeeding to a party's functions, by the liquidator of the succession or the heirs of a deceased party

or by a successor who has acquired the right that is the subject matter of the dispute.

195. Heirs who are parties to a proceeding are required to notify the liquidator's name, address and other contact information to the other parties as soon as the liquidator takes charge of the succession.

Pleadings filed before the notification are valid, unless the court decides otherwise on the liquidator's request. Those filed after the notification are without effect and the proceeding is stayed until continued by the liquidator.

196. A continuance of proceeding is obtained by filing a notice with the court and notifying it to all the parties. The right to continue the proceeding can be contested within 10 days after the notification. If it is not contested within that time, the continuance of proceeding is deemed to be admitted.

If the interested persons do not continue the proceeding, a party can give them formal notice to do so. If they fail to comply with the formal notice within 10 days, any plaintiff in the case can ask that the case be set down for judgment as in default cases, and any defendant in the case, that the demand be dismissed.

CHAPTER IV

RECUSATION

197. A judge who knows of a valid ground for his or her recusation must disclose it to the chief judge or chief justice without delay. The chief judge or chief justice then appoints another judge to continue or try the case and informs the parties.

A party that knows of a ground for the judge's recusation must disclose it without delay in a written declaration notified to the judge and the other parties. If the judge does not recuse himself or herself within 10 days after the notification, the party can bring a demand for recusation. A party can waive the right to recuse, unless the judge or the judge's spouse has an interest in the case.

Declarations and any other document relating to the recusation are filed in the record.

198. The following situations, among others, can be considered violations of the requirement of impartiality and grounds for recusation:

(1) the judge being the spouse of one of the parties or of the lawyer of one of the parties, or the judge or the judge's spouse being related by blood or connected by marriage or civil union to one of the parties or to the lawyer of one of the parties, up to the fourth degree inclusively;

(2) the judge being a party to another proceeding pertaining to an issue similar to the one before him or her for determination;

(3) the judge having given advice or an opinion on the dispute or having previously dealt with the dispute as arbitrator or mediator;

(4) the judge having represented one of the parties;

(5) the judge being a member of an association or a partnership, endowed with legal personality or not, that is a party to the proceeding;

(6) a serious conflict existing between the judge and one of the parties, or one of the parties having threatened or reviled the judge during the proceeding or in the six months preceding the possible recusation.

If the judge or the judge's spouse has an interest in the case, the judge is disqualified.

199. A demand for recusation is notified to the judge and the other parties on the expiry of 10 days after notification of the declaration seeking the judge's recusation.

If no declaration was made, a party can seek recusation at any stage of the proceeding, provided the party shows that it has been diligent. Recusation can be demanded orally during the trial, in which case the grounds raised are recorded in the minutes.

If recusation is sought against the sole judge assigned to sit in the district where the proceeding is brought, the court clerk immediately informs the chief judge or chief justice.

200. The demand for recusation is decided by the presiding judge. The decision can be appealed by leave of a judge of the Court of Appeal.

If the judge grants the demand, he or she must withdraw from the case and abstain from sitting. If the judge dismisses the demand, he or she continues to preside over the case.

The court clerk advises the chief judge or chief justice of any case in which the trial is postponed because the judge has decided to recuse himself or herself.

CHAPTER V

INCIDENTAL PROCEEDINGS RELATING TO PLEADINGS

DIVISION I

WITHDRAWAL OR AMENDMENT OF PLEADING

201. Before a case is taken under advisement, the parties can withdraw or amend a pleading without it being necessary to obtain an authorization, provided doing so does not delay the proceeding and is not contrary to the interests of justice. However, the amendment of a pleading must not result in an entirely new demand having no connection with the original one.

An amendment to a pleading can be made, for instance, to replace, correct or complete statements or conclusions, allege new facts or assert a right accrued since the notification of the judicial demand.

202. A party that intends to withdraw or amend a pleading must notify a notice of the withdrawal or the amended pleading to the other party, who has 10 days to notify its opposition. If the other party opposes the withdrawal or amendment, the matter is decided by the court.

If other parties must respond following the withdrawal or amendment of a pleading, the time limit for responding is set by the parties or, failing that, by the court, if it is not already specified in the case protocol. The judicial demand must be notified without delay to any new defendant brought into the case as a result of the amendment of a pleading.

203. During the trial and in the presence of the other parties, the court can authorize a party to withdraw or amend a pleading without formality. The decision is recorded in the minutes of the hearing and any amended pleading is filed in the record as soon as possible, without notification being necessary.

At any time before judgment, the court, on its own initiative, can order the immediate correction of any clerical error or error of form, expression or calculation in a pleading, subject to the conditions it sees fit.

DIVISION II

DETERMINATION OF ISSUE OF LAW

204. The parties to a proceeding can jointly submit to the court a dispute between them on an issue of law relating to the demand. If the court considers it expedient to determine the issue for the orderly progress of the proceeding, it can do so in the course of the proceeding; otherwise, it determines the question in the judgment on the merits of the case.

DIVISION III

CONSOLIDATION AND SEPARATION OF PROCEEDINGS

205. Even when the demands do not arise from the same source or from related sources, the court can order that two or more proceedings between the same parties brought before the same jurisdiction be consolidated, provided it does not result in undue delay for any of the parties or serious prejudice to a third person.

As well, the court can order that two or more proceedings pending before it, whether or not they involve the same parties, be consolidated in order to be tried at the same time and determined on the same evidence, that the evidence in one of the proceedings be used in another or that one of the proceedings be tried and determined before the others.

When demands have been consolidated in the same proceeding, the court can order that they be separated, if it considers it advisable in order to protect the parties' rights.

DIVISION IV

SPLITTING OF PROCEEDING

206. The court can split a proceeding if it thinks it advisable in order to protect the parties' rights. The resulting trials are held before the same judge, unless the chief judge or chief justice decides otherwise.

DIVISION V

STAY OF PROCEEDING

207. If the Court of Québec is seized of a demand having the same juridical basis or raising the same issues of law and fact as a demand pending before the Superior Court, it can stay the proceeding on a party's request, provided this does not result in serious prejudice to the other parties.

A stay order is effective until the judgment rendered by the Superior Court has become final. The stay order can be revoked if new circumstances so warrant.

CHAPTER VI

INCIDENTAL PROCEEDINGS THAT TERMINATE PROCEEDING

DIVISION I

DISCONTINUANCE

208. Discontinuance by a plaintiff terminates the proceeding on the notification of a notice of discontinuance to the other parties and its filing with the court. It restores matters to their former state. It is effective immediately if it takes place before the court and in the presence of the parties.

209. If one of the plaintiffs in a joint demand discontinues it, that plaintiff or another plaintiff can continue the proceeding alone. In such a case, the judicial demand is amended accordingly and notified to the other parties, and the proceeding is continued in accordance with the rules applicable to any demand.

DIVISION II

TENDER AND DEPOSIT

210. A party to a proceeding can make or renew a tender and confirm it in a judicial declaration, which is recorded.

If a sum of money or a security is tendered, it is deposited with a trust company, and the receipt for the deposit is filed in the record.

Unless the tender is conditional, the party to whom the tender is made can receive the sum of money or security deposited, without prejudicing its claim to the balance.

211. For a deposit with a trust company to be valid, the trust company must be licensed under the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01). The trust company must undertake to place the sum on deposit as a deposit of money within the meaning of the Deposit Insurance Act (R.S.Q., chapter A-26) other than as a term deposit which would not be repayable at all times before maturity. The trust company must also, if applicable, undertake to remit the sum of money or security to the party to whom the tender is made on proof of performance of the obligation.

The document setting out the undertakings of the trust company is filed with the court.

DIVISION III

ACQUIESCENCE IN DEMAND

212. A defendant or a defendant's specially authorized mandatory can acquiesce in all or part of the demand at any stage of a proceeding.

A notice of acquiescence is filed with the court and notified to the plaintiff. If applicable, the mandatory's special authorization must be attached.

213. If acquiescence in the demand is unqualified, the court clerk renders judgment immediately.

If acquiescence in the demand is qualified, the plaintiff must notify acceptance or refusal to the defendant within 15 days after notification of the notice of acquiescence. If the plaintiff accepts, the court clerk renders judgment accordingly. If the plaintiff refuses, the proceeding continues, but the plaintiff can nevertheless obtain judgment for the amount specified in the notice of acquiescence, in which case the proceeding continues only for the balance.

A plaintiff who notifies neither acceptance nor refusal is presumed to have accepted the acquiescence with its qualifications. However, the court can relieve the plaintiff from the consequences of the default so long as judgment has not been rendered on the acquiescence.

214. If there are two or more defendants and only one or some of them file a notice of acquiescence, the court can render judgment against the acquiescing defendants, on notification of a notice to all the parties. Alternatively, the court can choose to continue the proceeding and enter a uniform judgment against all the defendants, either because of the subject matter of the demand or to avoid conflicting judgments.

DIVISION IV

SETTLEMENT

215. The parties can terminate the proceeding by making a transaction, whether they reach their agreement in or outside the presence of the court. In the latter case, they must file a notice of settlement with the court without delay.

TITLE III

GATHERING AND DISCLOSURE OF EVIDENCE BEFORE TRIAL

CHAPTER I

PRE-TRIAL EXAMINATION

DIVISION I

GENERAL PROVISION

216. A pre-trial examination, whether written or oral, can bear on any fact that is relevant to the dispute and on the evidence supporting such facts. It can also be conducted for documentary disclosure purposes. Pre-trial examinations can be conducted only if they are provided for in the case protocol and in compliance with the terms, number and length specified.

Other than the parties, the following can be examined:

- (1) a representative, an agent or an employee of a party;
- (2) in a civil liability case, the victim and any person involved in the act that caused the injury;
- (3) a person for whom a party acts as administrator of the property of another; or
- (4) a person for whom a party acts as prête-nom or whose rights a party has acquired by transfer, subrogation or other similar title.

Any other person can be examined with his or her consent and that of the other party or with the authorization of a judge, subject to the conditions the judge determines. No minor person or incapable person of full age can be examined without the authorization of a judge.

DIVISION II

EXAMINATION IN WRITING

217. A party can notify to the other party and, if another person is to be examined, to that other person, an examination in writing on facts relevant to the dispute, and require the party or person to answer within a specified time, which cannot exceed one month.

The questions must be clear and specific, so that the absence of an answer can be taken as an admission, by the party or the person examined, of the facts to which the questions pertain.

The examination and the answers are filed in the court record by either of the parties.

218. The answers must be given in writing and signed by the party or the person examined. They must be direct, categorical and specific, failing which they can be rejected and the facts to which the questions pertain, held to be proved.

If the party is a legal person, a general or limited partnership, or an association within the meaning of the Civil Code, the answers must be given by a specially authorized director or officer, unless they are determined by a special resolution of the legal person, partnership or association.

219. If the party or the person examined fails to answer the questions asked, the facts to which the questions pertain are held to be proved as far as that party or person is concerned.

Nevertheless, the court can, for valid cause, relieve the party from the default and allow the party to answer, subject to the conditions it sees fit. The court can also ask any other questions considered necessary and relevant, which the party must answer, otherwise the facts to which the questions pertain are also held to be proved.

DIVISION III

ORAL EXAMINATION

220. A party intending to conduct an oral pre-trial examination must inform the person concerned at least three days in advance and provide details on the agreement reached with the other parties' lawyers as to the nature, subject, time and place of the examination. In the absence of such an agreement, the person the party wishes to examine is summoned to appear before the court clerk on the date specified in a subpoena notified at least five days before that date.

In a civil liability case, if the injurious act on which the demand is founded is also a criminal act, the necessary measures must be taken to ensure that the victim is not, without his or her consent, confronted with the alleged or confirmed perpetrator.

221. The deposition given by the person examined is subject to the same rules as oral evidence given at trial; it is sound-recorded, unless waived by the parties.

The deposition forms part of the files of the parties and each of them has the option of producing it in evidence in its entirety, producing only excerpts or not producing it at all. If the examination is conducted before the court clerk, it is part of and must be filed in its entirety in the court record.

222. The parties can, before a pre-trial examination, submit the objections they anticipate to a judge for determination or for directions as to the conduct of the examination.

Objections raised during the examination do not prevent it from continuing, the witness being bound to answer. They are however recorded for determination by the court at trial. On the other hand, objections relating to the non-compellability of a witness or to fundamental rights are submitted to a judge as soon as possible for determination.

223. No pre-trial examination is permitted in cases where the amount claimed or the value of the property claimed is less than \$30,000.

No pre-trial examination can last more than five hours, or in family matters or cases where the value in dispute is less than \$100,000, two hours. The court can only authorize a longer duration.

224. The court can, on request, terminate an examination that it considers excessive or unnecessary and, on doing so, rule on the costs.

CHAPTER II

EXPERT EVIDENCE

DIVISION I

WHEN EXPERT EVIDENCE CAN BE USED

225. The purpose of expert evidence, provided by a qualified expert in the area or matter concerned, is to enlighten the court and assist it in assessing evidence.

An expert can be called on to investigate, verify and determine facts relating to a dispute, to assess real evidence, to determine or audit accounts or other data, to provide an opinion on the liquidation or partition of property or to verify the state or location of certain premises or things.

An expert can also be called on to give an opinion on a person's personal integrity, condition or capacity or adaptation to a given set of circumstances.

226. The parties can agree on the need for expert evidence and record it in the case protocol or, with the authorization of the court, can come to such an agreement at any time before the case is ready for trial.

The parties cannot submit more than one expert opinion, whether joint or not, per area or matter, unless the court authorizes otherwise given the complexity or importance of the case or the state of knowledge in the area or matter concerned.

The parties must disclose the instructions given the expert to the court.

227. In the case of joint expert evidence, the parties determine together what parameters must be covered, what expert is to be appointed, what amount

is to be paid as the expert's fee and how the fee is to be paid. If the parties fail to agree on any of those subjects, the matter is decided by the court.

A joint expert can require that his or her fee and costs be deposited at the court office before submission of the report. If such a deposit has not been required, the joint expert has a right of action against all the parties to the proceeding, who are solidarily liable for the amount due.

228. At any stage of a proceeding, if it considers that expert evidence is necessary in order to resolve the dispute, the court, even on its own initiative, can appoint one or more qualified experts to provide evidence. The court order defines the expert's mandate, sets the time limit within which the expert must submit a report and rules on the expert's fee and its payment. It is notified to the expert without delay.

DIVISION II

EXPERT'S MISSION AND DUTY

229. The mission of an expert, whether appointed by the court, by the parties jointly or by a single party, is to enlighten the court by giving an expert opinion on the points submitted and explaining the analytical method used or, in the case of a bailiff, by preparing a certified report. This mission overrides the parties' interests.

230. An expert must fulfill his or her mission objectively, impartially and thoroughly. The expert must, on request, provide the court and the parties with details on his or her professional qualifications, the progress of the work and the instructions received from a party. The expert is also required to comply with the time limit given. The expert can, if necessary, request directives from the court.

Experts act under their professional oath. If an expert has not sworn a professional oath, the parties or the court can require that he or she be sworn in. In addition, experts must sign the declaration prepared by the Minister regarding the fulfillment of an expert's mission and attach it to their report.

An expert who does not have the required qualifications or who is seriously remiss in fulfilling his or her mission can, at a case management conference, be replaced or repudiated on the court's initiative or a party's request.

231. A joint or court-appointed expert is vested with the court's authority to gather the evidence required to carry out his or her mandate. The expert can examine any document or thing and visit any premises.

With the authorization of the court, the expert can gather testimony and, if necessary, summon witnesses. The expert swears in summoned witnesses, hears their depositions, preserves their evidence and certifies its source and integrity.

The expert is required to give the parties at least five days' notice of when and where the operations are to begin.

DIVISION III

EXPERT'S REPORT

232. An expert's report must provide sufficient details and reasons to enable the court to appreciate the facts and conclusions it contains. It must include the instructions received from the parties. Any documents and testimony gathered by the expert must be attached to the report. The report and the attached materials form part of the evidence.

The expert's conclusions are not binding on the court or on the parties, unless the parties declare that they accept them.

233. A joint or court-appointed expert submits an operations report, with conclusions, to the parties and files a copy with the court before the expiry of the time limit given. An expert appointed by one party submits the report to the party, who discloses it to the other parties and files it in the court record within the prescribed time limit for disclosure of evidence.

234. After the report has been filed but before the trial begins, the expert must, on the court's or the parties' request, provide clarifications on technical aspects of the report and meet the parties to discuss his or her opinions ahead of the trial.

If conflicting expert's reports are filed, the parties call the experts to a meeting so that they can reconcile their opinions, identify the points on which they differ and prepare an additional report on those points. If the parties fail to call such a meeting, the court can, at any stage of the proceeding, even on its own initiative, order the experts to meet and file an additional report within a specified time.

235. Before the trial begins, a party can demand that an expert's report be dismissed on the ground of irregularity, substantial error or bias, in which case the demand must be notified to the other parties within 10 days after the report is submitted.

If the court considers the demand well-founded, it orders that the report be corrected or that it be withdrawn. In the latter case, it can allow another expert to be appointed. The court can also reduce the amount of the fee payable to the expert or order that the expert repay any amount already received, to the extent specified.

DIVISION IV

SPECIAL RULES APPLICABLE TO PHYSICAL, MENTAL OR PSYCHOSOCIAL EXAMINATION

236. A party or the person who suffered the injury having given rise to the dispute cannot be required to undergo a physical or mental examination unless his or her physical or mental condition must be considered in order to rule on the matter. Even in such a case, the examination must be warranted given the nature, complexity and purpose of the judicial demand.

A psychosocial examination can be required only in matters relating to a person's personal integrity, condition or capacity and only if it is necessary in order to rule on the matter. A psychosocial examination can be required in family matters if the person concerned consents or if so ordered by the court when the parents differ on the necessity of them or their child being subjected to such an examination.

237. A party that requests a physical, mental or psychosocial examination must give the person concerned and the other parties' lawyers at least 10 days' notice of the place, date and time of the examination. The party must give the person the name of the expert responsible for conducting the examination and pay to the person in advance the indemnities and allowances payable to a witness, unless the person is otherwise compensated.

The person, at his or her own expense, can be accompanied during the examination by the expert of his or her choice.

238. The court can, on request, stop a physical, mental or psychosocial examination from taking place or change the conditions of the examination, despite the parties' agreement, if it considers it necessary in order to protect the person's right to personal integrity and respect.

If it is satisfied that another examination is necessary, the court can order the person to undergo another examination by a court-appointed expert. The place, date and time and the conditions of the examination are specified in the order. The examination is conducted at the expense of the party that requested it.

239. If necessary in order to determine the physical or mental condition of a party or of the person who is the subject of the demand or who suffered the injury having given rise to the dispute, the court can order the health and social services institution holding the record of the person who is to undergo an examination or whose death has given rise to a demand based on civil liability to disclose the record to a party and allow the party to make a copy of the information that is relevant as evidence.

CHAPTER III

DISCLOSURE AND FILING OF EXHIBITS AND OTHER EVIDENCE

DIVISION I

GENERAL PROVISION

240. Unless otherwise determined by the court, the procedure and the time limit for the disclosure of exhibits and other evidence between the parties must be set out in the case protocol in compliance with the rules of this chapter.

If the case protocol sets out no such procedure or time limit, a party, on being informed that another party intends to use an exhibit or other evidence, can, without formality, request a copy of, or some other form of access to, the exhibit or other evidence. If the request is not complied with within 10 days, the court issues such orders as are appropriate.

DIVISION II

TIME LIMITS FOR DISCLOSURE AND FILING

241. The exhibits in support of a judicial demand must be listed in the summons to the defendant; those in support of a pleading must be listed in the pleading or in a notice attached to it.

No notice is required if copies of the exhibits are delivered to the other parties when the demand or the pleading is notified to them.

242. A party in possession of evidence it intends to use at trial must disclose it to the other parties on or before the filing of the declaration accompanying the request for setting down for trial. The party is dispensed from doing so if the evidence is an exhibit in support of a pleading or if the case protocol provides otherwise. In the case of an oral defence, the evidence must be disclosed within 30 days after the order to set down for trial is issued or the date of the trial is set, unless the court determines another time limit.

A party that fails to disclose evidence cannot use it at trial except with the authorization of the court.

243. A party that is unable, because of the circumstances or the nature of an exhibit or other evidence, to deliver a copy to a party that requested one is required to provide some other form of access to the exhibit or other evidence.

If the parties cannot agree, they can ask the judge to determine the procedure and the time limit for such disclosure.

244. Unless they have already been filed with the court for the purposes of the pre-trial conference, the parties must file exhibits and other evidence at

least 15 days before the scheduled trial date, or at least three days before that date if the trial is to be held within 15 days. However, in all instances, the court can request that exhibits and other evidence be filed within the time it specifies.

When a case is processed following the defendant's default, exhibits and other evidence are filed with the court with the request for setting down for judgment.

245. Evidence by sworn statement must be disclosed to the other parties as soon as possible so that they have at least 10 days to require that the witness be summoned for cross-examination.

DIVISION III

DOCUMENT OR REAL EVIDENCE IN POSSESSION OF PARTY OR THIRD PERSON

246. Any document relating to the dispute that is in the possession of a third person must be disclosed to the parties or produced for their inspection; any real evidence that is in the possession of a party or a third person must, if necessary, be submitted to an expert, subject to the conditions agreed with the parties. The party or third person is required to keep the real evidence or, if applicable, an adequate representation that shows its current condition, until the end of the trial.

If the party or third person refuses or in case of disagreement, the court issues such orders as are appropriate.

DIVISION IV

DEMAND IN COURSE OF PROCEEDING

247. Any exhibit or other evidence that a party intends to use for the purposes of a demand in the course of the proceeding must be disclosed to the other parties as soon as possible or, in the case of real evidence, made available to the other party as soon as possible before the hearing. Otherwise, the exhibit or other evidence cannot be produced except with the authorization of the court.

CHAPTER IV

GATHERING OF EVIDENCE BEFORE TRIAL

DIVISION I

DEMANDS BEFORE INSTITUTION OF PROCEEDING

248. A person who expects to become a party to a dispute and has reason to apprehend that some necessary evidence may be lost or become more difficult to produce can examine witnesses whom the person fears may be absent, may die or may become incapacitated, or have a thing or property whose condition may affect the outcome of the dispute inspected. The person must obtain the consent of the potential adverse party or the authorization of the court.

A person who carries out work on an immovable that may damage a neighbouring immovable can demand an inspection of the neighbouring immovable without being required to show that a dispute is likely.

249. The demand to the court must, in addition to stating the grounds for the applicant's apprehension, include the names and contact information of the potential adverse party and of the witnesses to be heard, the facts that suggest that a dispute is likely and a description of the nature of the potential dispute, the facts on which the potential adverse party and witnesses are to be questioned, or the description and location of the thing to be inspected, the purpose of the inspection, and the name and contact information of the person who is to make the inspection.

The demand is presented before the court before which the potential dispute could be brought, as if it were a demand in the course of a proceeding.

The demand must be notified, at least five days before its scheduled presentation date, to the potential adverse party and, if applicable, to the third person holding the thing or property to be inspected.

250. If the demand is granted, the parties agree on where and when the witnesses will be heard or the thing inspected. In the latter case, how the thing is to be inspected is determined by the parties if not already determined by the judgment.

The decision rendered cannot be appealed.

The costs incurred for the gathering of evidence are borne by the party that requires it. However, if the evidence is eventually used in a proceeding, the cost of the depositions and authorized expert's reports forms part of the legal costs.

251. The depositions and reports are kept by each of the parties for use by any of them in the proceeding in anticipation of which the evidence was gathered. If a proceeding is commenced, the evidence so gathered does not

prevent the summoning of witnesses or experts to be examined anew, nor does it adversely affect any ground that a party may later wish to raise against the admissibility of the evidence so gathered.

DIVISION II

PRE-TRIAL DEMANDS

252. Before the trial begins, a party to the proceeding, with the authorization of the court, can examine witnesses whom the party fears may be absent, may die or may become incapacitated, or require the inspection, by a person of the party's choice, of a thing or property which may be lost and whose condition may affect the outcome of the dispute.

If the demand is granted, the parties agree on where and when the witnesses will be heard or the thing inspected. In the latter case, how the thing is to be inspected is determined by the parties unless already determined by the judgment. The costs incurred for the gathering of evidence form part of the legal costs if the evidence is filed in the court record.

The depositions and reports do not prevent the summoning of the witnesses or experts to be examined anew, nor do they adversely affect any ground that a party may later wish to raise against the admissibility of the evidence so gathered.

CHAPTER V

CONTESTATION OF EVIDENCE

DIVISION I

CONTESTATION OF AUTHENTIC ACT

253. In the course of a proceeding, a party can demand that an authentic act intended to be used at trial by that party or another party or already filed in the record be declared a forgery.

The demand can be made at any time before judgment, but after evidence is closed, it can be granted only if it is shown that the party had no earlier knowledge of the forgery.

254. Before demanding that an act be declared a forgery, a party must notify a notice to the other parties, asking them to declare whether or not they intend to use the contested act.

If the other parties do not respond within 10 days or if they declare that they do not intend to use the act, it cannot be produced at trial or it is removed from the record. If one or more parties declare that they intend to use the act, the demand for a declaration of forgery must be presented before the court for a ruling.

The grounds in support of the allegation that the act is a forgery must be set out in a pleading notified to all the parties and to the public officer who is in possession of the original of the act. The pleading must be accompanied by a certificate of the court clerk attesting that an amount sufficient to cover the costs of the other parties if the allegation is dismissed has been deposited with the court.

255. If the original of a contested act has not already been filed in the record, the court can, on request, order the person who has custody of the original to file it with the court within a specified time. If the custodian cannot surrender the original, the court can instead order that an authentic copy of the original be filed; the court can nevertheless order the filing of the original if it judges it essential.

The judgment ruling on the allegation that an act is a forgery also determines, if necessary, to whom the original is to be handed over.

DIVISION II

CONTESTATION OF CERTIFICATE OR RETURN

256. A party can demand that a certificate or return issued by a bailiff or other court officer, or any person authorized to make a return of notification, be declared false or inaccurate.

However, the court can authorize the correction of errors in the certificate or return. The parties can, at any time before a decision is made, give the court officer their consent to a correction.

DIVISION III

CONTESTATION OF OTHER DOCUMENT

257. If the formalities required to establish the validity of an exhibit or other document were not observed, a party can, in the course of a proceeding, demand that it be removed from the record. Such a demand can also be made by a party that disowns, or does not recognize the origin or contests the veracity or integrity of, a document.

A party that intends to contest the origin, veracity or integrity of a document must specify, in a detailed declaration, the facts and grounds that support the party's claim and make it probable.

258. If the contested document is a semi-authentic act and only a copy has been filed in the record, the party that intends to use the document must prove its semi-authentic character. The court can direct the person who has custody of the original to deliver it to the court office, which must in return provide a certified copy, at the contesting party's expense. If the custodian cannot surrender the original, the court can order that a certified copy be filed with the court within a specified time.

CHAPTER VI

ADMISSION OF AUTHENTICITY OF EVIDENCE

259. After the issues are joined but before the trial begins, a party can serve another party formal notice to admit the origin, veracity or integrity of a document or other evidence.

If the document or other evidence has not already been disclosed, an adequate representation of it or, in the absence of such a representation, particulars on how to access it must be attached to the formal notice.

The party served with the formal notice must admit or deny the origin, veracity or integrity of the evidence in a notice notified to the other party within 10 days.

Failure to respond to the formal notice is deemed to be an admission of the origin and integrity of the evidence, but not its veracity.

TITLE IV

TRIAL

CHAPTER I

CONDUCT OF TRIAL

260. A trial comprises the evidence phase, followed by the argument phase, in which parties make their addresses to the court.

During evidence, the party on whom the burden of proof lies examines its witnesses first; the other party then adduces its evidence, after which the first party can adduce evidence in rebuttal. The court can allow the examination of other witnesses.

After evidence is closed, the party on whom the burden of proof lies presents its arguments first, followed by the other party. The first party can reply and, if the reply raises any new point of law, the other party can answer. No other address to the court can be made without leave of the court.

If the circumstances so require, the court can adjourn a trial subject to the conditions it determines. In such a case, it immediately sets another date or asks the court clerk to set the case down again for trial so that a new date may be set.

261. If, on the day of the trial, a party does not produce witnesses or fails to justify the absence of its witnesses, its evidence is declared closed.

However, if the party proves that it has been diligent and shows that the testimony of a witness is necessary and that the witness's absence is not due

to any contrivance on its part, the court can adjourn the trial. The adjournment can be avoided if the other party consents to the party stating under oath the facts the defaulting witness would have related, and either admits the truth of those facts or admits that the witness would have testified to those facts.

262. During evidence, the court can make any appropriate order allowing it to inspect the premises in order to verify disputed facts and make the observations it considers necessary in order to resolve the dispute. The court can instead ask a bailiff to report on the state or condition of certain premises or things.

263. At any time before the judgment, the court can draw the attention of the parties to any gap in the proof or procedural defect and permit the parties to remedy it, subject to the conditions it determines.

CHAPTER II

EVIDENCE AT TRIAL

DIVISION I

SUMMONING OF WITNESSES

264. Witnesses are summoned to attend at court by a subpoena issued by a judge, a court clerk acting on a party's request or a lawyer.

They must be summoned at least 10 days before the time at which they are scheduled to attend at court, unless there are urgent circumstances and the judge or court clerk shortens the notification period. However, the notification period cannot be shortened to less than two days. The decision to shorten the notification period must be recorded on the subpoena.

A witness who is confined in an institution governed by health services and social services legislation or held in a detention centre or a penitentiary is summoned to attend at court by an order addressed to the director or the jailer by a judge or a court clerk.

265. A witness can be summoned to give an account of facts of which he or she has personal knowledge, to give an opinion as an expert or to produce a document or other evidence.

A notary or a land surveyor cannot be summoned for the sole purpose of producing an authentic copy of an act executed en minute, unless the document has been alleged to be a forgery. A bailiff cannot be summoned to testify about facts or admissions that he or she may have witnessed in the course of notifying a pleading.

266. A subpoena must state the nature of the demand, specify where and when the witness is to attend and mention the right to request an advance on the indemnities and allowances to which witnesses are entitled.

It must also invite the witness to contact the lawyer of the party for whom he or she is to testify, in order to obtain the necessary information about the case and check beforehand whether attendance at court is still required. The lawyer's contact information must be included for that purpose.

The subpoena must contain information concerning the role, the rights and the duties of witnesses, and the indemnities and allowances to which witnesses are entitled. It must also explain the consequences of non-attendance. This information can instead be given in a leaflet attached to the subpoena.

267. Any person present at a hearing can be required to give evidence as if under subpoena. A person cannot refuse to give evidence under pretext of not having received an advance for expenses.

DIVISION II

COMPENSATION OF WITNESSES

268. A party that summons a witness other than another party must send with the subpoena an advance on the loss of time indemnity and the travel, meal and overnight accommodation allowances prescribed by government regulation. The advance must cover the first day of attendance at court. The summoning party is dispensed from this obligation for expenses which it pays directly or for which the witness is otherwise compensated.

269. A witness who has been summoned and has received the prescribed advance is required to attend at court under pain of being compelled.

If the witness fails to attend and the court considers that his or her testimony would be useful, it can order the person to pay all or part of the costs caused by the non-attendance and issue an arrest warrant, which is executed by a bailiff.

The witness can be held in custody under the warrant until he or she testifies or is released on bail. Examination of the witness must begin without delay.

270. A witness entitled to an indemnity and allowances can pursue payment of the amount owed him or her against the summoning party. A certificate of the court clerk attesting to the witness's attendance and to the amount due is equivalent to an immediately enforceable judgment.

DIVISION III

HEARING OF WITNESSES

271. All persons are presumed fit to testify and can be compelled to do so. However, persons who, because of their young age or physical or mental condition, are unable to relate the facts they have witnessed are not fit to testify.

272. Before testifying, witnesses must state their name and place of residence and swear under oath to tell the truth.

A refusal to take the oath constitutes a refusal to testify; if it persists, it constitutes contempt of court.

273. Witnesses are entitled to the protection of the court if the disclosure of their address gives cause to fear for their safety. They are also entitled to the protection of the court against any form of intimidation while they are testifying and against abusive examination.

274. In any contested proceeding, the witnesses are examined in open court, the other parties being present or having been duly called.

A party can request that the witnesses testify outside one another's presence. However, barring exceptional circumstances, no such request can be made in the case of expert witnesses.

A witness who has been examined before the trial can be examined again during the trial on a party's request.

If it is necessary to examine a witness at a distance, the technology used must allow the witness to be identified and to be heard and, to the extent possible, seen, live.

275. Witnesses are examined by the summoning party or that party's lawyer.

Questions must pertain only to the facts relevant to the dispute. They cannot be put in such a way as to suggest the desired answer, unless the witness is clearly trying to elude a question or to favour another party or, being a party to the proceedings, is adverse in interest to the examining party.

When a party has finished examining a witness it has summoned, any other party adverse in interest can cross-examine the witness on any fact relevant to the dispute and can in any manner show grounds for rebutting the witness's testimony.

A witness can be called again by the summoning party, either to be examined on new facts revealed on cross-examination or to explain answers to the questions asked by another party.

Subject to the rules of evidence, the court can ask the witness any question it considers useful.

276. The party that summoned a witness can attack the credibility of his or her testimony by producing other witnesses to disprove the testimony. With leave of the court, the party can also do so by proving that the witness made previous statements that are inconsistent with his or her present testimony, provided the witness is first questioned on the subject.

The fact that a witness is a blood relative of or is connected by marriage or civil union or by community of interest to the summoning party does not provide grounds for impeachment, but can affect the credibility of the testimony.

277. Witnesses cannot be compelled to disclose any communication that may have been made to them by their spouse during their life together.

278. Public servants summoned as witnesses cannot, given their duty of discretion, be compelled to disclose information obtained in the exercise of their functions if disclosing that information would be contrary to the public interest.

The public interest reasons must be set out in a statement by the minister or deputy minister to whom the public servant answers and be submitted to the appraisal of the court.

279. Except to the extent provided for in section 9 of the Charter of human rights and freedoms, witnesses cannot be compelled if their testimony would violate professional secrecy. The court must ensure on its own initiative that professional secrecy is respected.

280. Witnesses cannot refuse to answer a question on the grounds that the answer may tend to incriminate them or expose them to a legal proceeding of any kind; their answers cannot be used against them, except in a prosecution for perjury or for the giving of contradictory evidence.

281. A witness who is in possession of a document or other evidence that is relevant to the dispute is required to produce it on demand.

A copy of the evidence made by the court clerk, and certified by him or her as being true to the original, has the same probative force as the original.

282. The court can order a party to produce, at the appropriate time, in the courtroom or in any other convenient place, any real evidence in its possession that a witness is called on to identify. If the party does not obey the order, the evidence is deemed to be identified, unless the court relieves the party from default before the judgment is rendered.

283. A witness who refuses to answer a question without valid cause is guilty of contempt of court, as is a witness who is in possession of relevant evidence and refuses to produce it or to make it available to the court.

284. A witness cannot withdraw without leave of the court. If the deposition cannot be completed on the first day the witness attends at court, he or she is required to re-attend on the next working day or at any other time specified by the court.

A witness who withdraws without leave or fails to re-attend is subject to the same penalties as a witness who fails to attend.

DIVISION IV

HEARING OF MINOR PERSON OR INCAPABLE PERSON OF FULL AGE

285. When the court is to hear a minor person or an incapable person of full age, the person can be accompanied by a person to assist or reassure him or her.

286. The judge can examine a minor person or an incapable person of full age in the courtroom or in chambers. In the case of an incapable person of full age, if it is in his or her interest, the court can, after advising the parties, examine the person where he or she resides or is confined, or in any other convenient place. If the circumstances so require, the judge can, after advising the parties, examine the person outside their presence.

The examination by a judge in chambers or elsewhere outside the courtroom is conducted in the presence of the court clerk and, if applicable, the person's lawyer. The parties' lawyers attend the examination unless the judge decides to examine the person outside their presence, in which case the judge's decision must give reasons.

The deposition is sound-recorded and sent to the parties on request.

DIVISION V

WRITTEN EVIDENCE

287. A party can produce as evidence a written statement by a witness, including a bailiff's certified report, provided the statement has been notified to the other parties beforehand. The statement is deemed to have been made under oath.

Any other party can, before the scheduled trial date, require that the witness be present at the evidence hearing.

DIVISION VI

EXPERT EVIDENCE

288. The report of an expert stands in lieu of his or her testimony. The expert's report is admissible only if it was disclosed to the parties and filed in the record within the time for disclosure and production of evidence. Otherwise, it can be admitted only if it was made available to the parties by another means in a timely manner so that they could react and determine whether the expert's presence might be useful. It is also admissible outside such timeframes with leave of the court.

289. Each of the parties can examine a joint expert to obtain clarifications on points covered in the expert's report. In any other case, a party cannot examine an expert it has appointed unless so authorized by the court or unless the purpose of the examination is to obtain the expert's opinion on new evidence introduced in the course of the proceeding. A party cannot cross-examine an expert appointed by another party except if it is necessary in order to obtain clarifications on the expert's report or on the points on which the experts differ.

290. The court determines the order and manner in which expert evidence is to be presented.

DIVISION VII

TESTIMONY OUTSIDE PRESENCE OF COURT

291. With leave of the court or if the parties so agree, an examination can be held outside the presence of the court at the place and time determined by the court or jointly by the parties.

The deposition of the witness is heard, all parties being present or having been duly called. The deposition is sound-recorded and filed in the record and has the same force and effect as if it had been heard in court.

292. When a party adduces evidence by written statement, another party can summon the deponent to be examined outside the presence of the court even before the trial begins. The examination can pertain not only to evidence attested to in the statement but also to any other relevant fact. The deponent's failure to attend entails the dismissal of the statement.

293. If an illness or a disability prevents a witness from attending the hearing, the court, even on its own initiative, can order that the witness be examined at a distance using a technological means, or appoint a commissioner to take the witness's evidence. The court can do likewise in order to avoid unnecessary travel by a witness living in a remote location.

If the court chooses to appoint a commissioner, it gives the commissioner the necessary instructions. It also sets the time within which the examination is to be conducted and the commissioner's report is to be filed, and determines the amount to be advanced to the commissioner to cover costs. The examination is recorded or sound-recorded, and certified by the commissioner. The commissioner is authorized to make copies of any documents exhibited by the witness that he or she is not willing to surrender. The examination together with the exhibits produced by the witness are disclosed to the parties and to the court. A party that wishes to be represented at the examination must advise the commissioner in a timely manner and designate a representative, who must be given five days' notice of the date and place of the examination.

294. Objections raised during the examination of a witness outside the judge's presence do not prevent it from continuing, the witness being bound to answer. They are however recorded for determination by the court at trial. On the other hand, objections relating to the non-compellability of a witness, to professional secrecy or to fundamental rights are submitted to a judge as soon as possible for determination.

DIVISION VIII

INTERPRETATION SERVICES

295. To facilitate the examination of a witness, the court can retain the services of an interpreter.

The interpreter's remuneration is borne by the Minister of Justice if one of the parties is a beneficiary, in the judicial districts of Abitibi and Roberval, under the agreement approved by the Act approving the Agreement concerning James Bay and Northern Québec (R.S.Q., chapter C-67) or, in the judicial district of Mingan, under the agreement approved by the Act approving the Northeastern Québec Agreement (R.S.Q., chapter C-67.1).

296. A witness who is unable to hear or to speak by reason of a disability can take the oath and testify by any means enabling the witness to express himself or herself. If such means are unavailable, the witness can be assisted by an interpreter, whose remuneration is borne by the Minister of Justice.

DIVISION IX

PRESERVATION OF ORAL EVIDENCE

297. Unless the parties waive the preservation of oral evidence, depositions by witnesses are sound-recorded so that the oral evidence can be preserved and reproduced.

The Minister of Justice provides the court with the necessary sound-recording systems. However, if an examination is conducted elsewhere than at the court, in a place chosen by the parties, it is up to the parties to choose an appropriate mode of sound recording or to call on the services of a stenographer.

Sound recordings of oral evidence can be destroyed on the expiry of three years after the judgment of last resort or after the occurrence of the act terminating the proceeding, unless their destruction is stayed by the chief judge or chief justice.

298. A stenographer certifies, under his or her oath of office, the correctness of the stenographic notes or their transcription. At the beginning of each deposition, the stenographer mentions the name of the judge presiding at the trial and the name of the witness. The stenographer records objections and

decisions and preserves the stenographic notes as set out in the applicable regulations.

Stenographic notes are transcribed on a party's request in cases under appeal. They are also transcribed if the judge so orders, in which case the parties advance the cost of transcribing the depositions of their respective witnesses.

BOOK III

NON-CONTENTIOUS MATTERS

TITLE I

GENERAL PROVISIONS

299. Non-contentious demands, in addition to those described as such by law, are demands which, because of the nature of an act or the capacity of the plaintiff, are required by law to be submitted to a review by the courts so that the latter can approve or authorize an act, give a person authority to act, approve or homologate a decision or an act, or verify a fact or a legal situation and determine its consequences.

300. Non-contentious demands include demands relating to

(1) tutorship to an absentee or to a minor person, the emancipation of a minor person, or the protective supervision of or a protection mandate for a person of full age;

(2) a declaratory judgment of death, the probate of a will, letters of verification or the liquidation or the partition of a succession;

(3) the alteration of the register of civil status;

(4) the appointment, designation or replacement of any person when required by law to be carried out by the court, on its own initiative or failing an agreement between the interested parties, and demands of a similar nature in connection with tutorship to a minor person, the protective supervision of a person of full age, a succession or the administration of the property of others;

(5) the administration of undivided property, of a trust or of the property of others;

(6) the acquisition of the right of ownership in an immovable by prescription;

(7) the registration, correction, reduction or cancellation of an entry in the land register or the register of personal and movable real rights; and

(8) the issue of a notarial act or the replacement or reconstitution of a writing.

Non-contentious demands also include the other demands for authorization, empowerment or homologation provided for in the Civil Code, including

(1) authorization to consent to care that is not required by the state of health of a person who is under 14 years of age or incapable of giving consent, or authorization to consent to the alienation of a body part of a minor person or an incapable person of full age; and

(2) a declaration of eligibility for adoption, the placement and adoption of a child or the assignment of a name to an adopted child.

Non-contentious demands further include demands for an exemption from the obligation to pay support and arrears to the Minister of Revenue or for the suspension of that obligation, if the demand is made jointly by the parties and the conditions of section 3 or 3.1 of the Act to facilitate the payment of support (R.S.Q., chapter P-2.2) are satisfied.

301. Non-contentious demands, whether presented to a court or a notary, are conducted as set out in this Book, subject to the special rules of Book V relating to certain civil matters.

However, as soon as a demand is contested, it is referred to the court to be continued as set out in Book II. Depending on the readiness of the case and on how much time has elapsed since the institution of the demand, the court gives the parties appropriate instructions for the establishment of a case protocol.

302. In dealing with a non-contentious demand relating to the personal integrity, status or capacity of a person, the court or the notary must act in the best interest of the person concerned so as to protect his or her rights and autonomy and uphold the public interest.

TITLE II

RULES APPLICABLE BEFORE COURT

CHAPTER I

DEMAND

303. A non-contentious demand is notified together with a notice informing the person concerned and the other interested persons of the place, date and time of presentation of the demand before the competent court. The notice must also include a list of the documents in support of the demand, and inform the recipients that these documents are available on request, subject to their being confidential.

304. A demand for authorization to sell property belonging to a minor person, a person of full age under tutorship or curatorship, an absentee or a person whose property is administered by another must set out the grounds on which it is based, describe the property and propose a method of sale and the

name of a person who could proceed with the sale. An appraisal of the property by an expert and, if applicable, the opinion of the tutorship council, must be attached to the demand.

CHAPTER II

PRESENTATION

305. The demand is presented before the court on the date specified in the notice with which it was notified, unless the plaintiff and the person concerned, before that date, agreed on another date of presentation with the court office.

The presentation cannot take place less than 10 days or more than two months after its notification.

306. The court ascertains that the demand has been served on the person concerned and notified to the other interested persons and that the necessary opinions, reports and expert's reports have been filed in the record.

The court can order that the demand be notified to any person that it considers to have an interest and can require the complementary opinions, reports or expert's reports it considers necessary. The court can thus order the appraisal of property by an independent expert designated by the court, if it has reason to believe that the appraisal attached to the demand does not reflect the value of the property. The court can also authorize an interested person to produce evidence in support of the view that person intends to assert.

The plaintiff, the person concerned or another interested person can adduce evidence by written sworn statement, by the testimony of witnesses or by the production of documents. The evidence can pertain to any relevant fact, even one that has arisen since the institution of the demand.

307. The court can authorize interested persons who are present to make informal representations that might enlighten the court in making its decision.

If such representations could constitute an actual contestation of the merits of the demand, the court, after verifying that the person who made them intends to contest the demand, can order referral of the case to the court having jurisdiction in contentious matters, subject to the conditions it determines and without subjecting the parties to the requirement of establishing a case protocol.

308. Persons invited to make representations or to participate in deliberations are not considered witnesses.

However, the court, if it considers it appropriate, can order the plaintiff or the person who is the subject of the demand to pay them compensation

equivalent to that paid to witnesses to cover transportation, meal and accommodation expenses.

TITLE III

RULES APPLICABLE BEFORE NOTARY

CHAPTER I

JURISDICTION OF NOTARY

309. Non-contentious demands relating to the tutorship of a minor person, to the protective supervision of a person of full age (including demands concerning the appointment or replacement of a tutor, curator or adviser), to a tutorship council or to a protection mandate can be presented before a notary in accordance with the rules of this Title. Demands for the probate of a will or for letters of verification can also be presented before a notary, unless the will concerned has been deposited with the notary or a member of the same firm.

The notary seized of a demand can rule on any ancillary matter.

CHAPTER II

DEMAND

310. The notary seized of a demand must serve it on the person concerned and notify it to all other persons who may have an interest in the demand given their close relationship with that person. The notary must attach a notice clearly stating the date and place of the beginning of operations by the notary, the purpose of the demand and the nature of the rights of interested persons, including their right to make representations they consider appropriate or to oppose the demand.

The notary can also, particularly if the purpose of the demand is to institute a tutorship for a minor person or protective supervision for a person of full age or to homologate a protection mandate, call the person concerned and the interested persons to a meeting. Such a meeting cannot take place less than 10 days nor more than two months after service of the demand. The notary is required to call such a meeting if the person concerned or an interested person requests it.

The notary files a copy of the demand and a copy of the notice with the court, together with the notice of meeting, if applicable, to ensure that the demand is publicized and to allow any person wishing to do so to make representations to the court or to the notary. The clerk informs the notary without delay of any representations received.

CHAPTER III

OPERATIONS AND CONCLUSIONS

311. If a meeting is held, the notary informs the plaintiff, the person concerned and the interested persons present of the purpose of the demand and hears any representations they wish to make to enlighten the notary in determining conclusions. The notary examines with them the testimony, documents and other evidence submitted. The evidence can pertain to any relevant fact, even one that has arisen since the notary was seized of the demand. If no meeting is held, the notary receives their representations by any other means and records them in the minutes of his or her operations.

312. If the demand is for the institution or review of protective supervision or the homologation of a protection mandate, the notary is required to verify that the person concerned is incapable, but cannot determine conclusions without having in hand the person's physical, mental and psychosocial assessment and a transcript of his or her examination. The notary reads the assessment and the transcript to all present at the meeting and explains the content of any other relevant exhibits.

If the demand relates to a protection mandate given in the presence of witnesses, a holograph will or a will made in the presence of witnesses, the notary notes the existence of the document and verifies its validity.

313. If the notary considers that an incapable person of full age needs to be assisted by a lawyer or by a tutor ad hoc, he or she must inform the interested persons. The notary can continue to act if the interested persons are not opposed to such assistance and if an agreement is reached with them on the costs involved. If the only disagreement is on such costs, the notary, before continuing the matter, can ask the court to determine them.

314. If representations are made that are equivalent to an actual contestation of the merits of the demand, the notary must, after verifying that the person who made them intends to contest the demand, withdraw from the matter and inform the interested persons.

In such a case, the notary draws up the minutes of the operations carried out and transfers the matter to the competent court, which is seized of it on the filing of the minutes. If the demand is for the probate of a will, the notary files the original of the will with the minutes.

If it considers it expedient, the court can ask the notary to gather all the evidence necessary for the pursuit of the matter, setting the time limit within which the notary must report back to the court so that it can make its own assessment of the facts.

315. On completing his or her operations, the notary draws up minutes and conclusions.

The minutes must identify the plaintiff, the person concerned, the interested persons called to the meeting, those who attended the meeting and those who made representations otherwise. The minutes must state the facts on which the demand is based and provide a detailed account of the operations carried out and the evidence produced. The minutes must also, if applicable, give an account of the testimony taken and of the deliberations of the tutorship council or of the meeting of relatives, persons connected by marriage or civil union, and friends.

If the demand relates to the tutorship of a minor person or to the protective supervision of or a protection mandate for an incapable person of full age, the notary notifies the minutes to the interested persons who attended the meeting and to the minor person, if 14 years of age or older, or the person of full age. The notary also notifies the minutes to the tutor or curator, the mandatary, the plaintiff and the spouse of the person concerned as well as to the Public Curator. If the demand relates to the verification of a will, the notary notifies the minutes to the heirs and successors to whom the demand was notified.

316. The notary promptly files the minutes of the operations and conclusions with the court of competent jurisdiction, together with the documents supporting the conclusions.

A notice is attached to the notified minutes, informing the persons notified of the powers of the court and of their right to file their opposition within 10 days after the filing of the minutes with the court. However, in the case of the probate of a holograph will or a will made in the presence of witnesses, the minutes are filed solely for publication purposes.

317. The court is seized of the matter on the filing of the notary's minutes. It can accept the conclusions set out in the minutes or amend or reject them, even if no opposition has been filed.

The court clerk sends the judgment or order without delay to the persons who received notice of the filing of the minutes.

BOOK IV

JUDGMENT, APPLICATION FOR REVOCATION AND APPEAL

TITLE I

JUDGMENT

CHAPTER I

GENERAL PROVISIONS

318. The judgment disposing of a dispute or deciding a case terminates the proceeding. Whether given in open court or rendered after advisement, it must be in writing and give reasons.

The judgment removes the matter from the judge's jurisdiction and becomes final if it cannot or can no longer be appealed.

319. A judgment that concerns support, custody or personal integrity or capacity can be reviewed if the plaintiff or any interested person becomes aware of new facts sufficient to have the judgment varied.

The same applies to a judgment in a non-contentious matter unless the decision is conclusive in character. A decision conclusive in character, particularly one that concerns a person's status, the ownership of movable or immovable property or an interest in such property, has the authority of *res judicata*.

CHAPTER II

ADVISEMENT

320. If a judge who has taken a case under advisement finds that a rule of law or a principle material to the outcome of the case was not debated during the trial, the judge must give the parties an opportunity to make submissions in the manner he or she considers most appropriate.

As well, the trial can be ordered reopened on the judge's own initiative. The order must give reasons and state how the reopened trial is to be conducted. The court clerk must send the order without delay to the chief justice or chief judge and to the parties' lawyers.

321. For the benefit of the parties, the judgment on the merits in first instance in contentious matters must be rendered within six months after the case is taken under advisement. The advisement period is a maximum of four months in small claims matters under Title II of Book VI, and two months in child custody or child support matters and non-contentious matters. A maximum two-month advisement period also applies for a judgment in the course of a proceeding or a judgment to determine whether a judicial demand is of an improper nature. In the case of a default judgment on account of the defendant's failure to answer the summons, attend a case management conference or defend on the merits, a maximum one-month period applies and runs from the time the case is ready for judgment.

The death of a party or a party's lawyer cannot delay judgment in a case taken under advisement.

If the advisement period has expired, the chief justice or chief judge can, on his or her own initiative or on a party's request, remove the matter from the judge's jurisdiction or extend the advisement period.

322. In the first week of each month, the court clerk sends the chief justice or chief judge a list of all cases in the judicial district, whatever their nature,

that have been under advisement for five months or more and, in small claims matters under Title II of Book VI, for three months or more.

CHAPTER III

REPLACEMENT OF JUDGE

323. If a judge is withdrawn from a case, dies, leaves office or is unable to act, the chief justice or chief judge can order that the case or cases pending before the judge be continued and completed by another judge, or set down for a new trial, depending on their state of readiness.

On the request of the chief justice or chief judge, a judge who leaves office must, within three months, complete any cases taken under advisement. A judge who is leaving office because of an appointment to another court must, if the chief justice or chief judge of that other court agrees, continue and complete any cases pending before him or her.

The chief justice's or chief judge's decision must take into account the circumstances and interests of the parties. He or she exercises the responsibilities conferred by this article personally, or requests a senior associate or associate chief justice or judge to exercise them.

The decision must determine the legal costs for any proceedings already had; the chief justice or chief judge can take any other measure he or she considers fair and appropriate.

324. A judge who continues a case or hears a case that was set down anew for trial can, with the parties' consent, decide to rely solely, as regards evidence, on the recording of the original trial or the transcript of stenographic notes. If that proves insufficient, the judge can recall a witness or require other evidence from the parties.

If stenographic notes must be transcribed or witnesses recalled, the costs involved are assumed by the Government unless the judge orders otherwise.

CHAPTER IV

RULES APPLICABLE TO JUDGMENT

325. A judgment containing a condemnation must be capable of being executed. A judgment awarding damages must liquidate the damages; a solidary condemnation against persons responsible for an injury must, if the evidence permits, determine the share of each of those persons in the damages as between them only.

326. A judgment awarding damages for bodily injury that reserves the plaintiff's right to claim additional damages must specify the subject matter of the potential claim and the time within which the claim must be made.

The judgment is enforceable despite an appeal pertaining to the reserved right to claim damages or the time within which it is to be exercised.

327. A judgment granting an authorization to act expires if not acted upon within the time specified or, if no time is specified by the court or by law, within six months.

A judgment authorizing care, the alienation of a body part or confinement in a health or social services institution expires if not acted upon within three months or within any other time specified by the court.

328. A judgment in a non-contentious matter authorizing the sale of the property of another must determine the type of sale and the terms of the sale. It must also designate the person who is to conduct the sale and specify how that person is to be remunerated.

If the court believes it will be conducive to obtaining a commercially reasonable price, it sets a reserve price for the sale.

329. A judgment pertaining to immovable or movable real rights must contain a description of the property so as to enable compliance with any publication requirement concerning rights in the property.

A judgment ordering restitution of fruits and revenues must, if necessary, order their liquidation by an expert; the party liable to the restitution is required to hand over all necessary supporting documents to the expert.

330. A party can renounce the rights arising from a judgment in its favour by filing a waiver with the court. The waiver is made by the party itself or by its mandatary acting under a special mandate.

If total and accepted by the other parties, the waiver operates to restore the proceeding to its state prior to the judgment.

CHAPTER V

FORMAL JUDGMENT

331. A judgment dated and signed by its author is an authentic act. It is deposited at the office of the court and entered without delay in the registers under the date appearing on it. It is kept in the court archives.

A judgment given in open court can be evidenced by the transcript of the sound recording of the judgment, signed by the person who rendered the judgment. The operative part cannot be modified in the transcription, although the judge can correct the form. An interlocutory judgment or a judgment rendered under Title II of Book VI is evidenced by the entering of the decision and its main whereas clauses as appearing in the minutes of the hearing attested by the person who rendered the judgment.

If there is a discrepancy between the original judgment and the entries in the registers, the former prevails, and the judge can without formality order that the registers be appropriately rectified.

332. On the entering of a judgment, other than a default judgment on account of the defendant's failure to answer the summons, a notice is notified to the parties and their lawyers. Notification of the judgment itself is required only if ordered by the judge who rendered the judgment or if required by law.

The court clerk can issue certified copies of a judgment on request and for a fee.

333. In non-contentious matters, the judgment is notified to the person who is the subject of the demand, unless the court dispenses with such notification.

A judgment concerning tutorship to an absentee or a minor person, protective supervision or a protection mandate is notified without delay to the Public Curator. A judgment on a demand relating to a person's status is notified to the Registrar of Civil Status.

334. The transcript of a judgment given in open court by a judge who has since died, become unable to act or left office can be signed by the chief justice or chief judge or by another judge he or she designates.

335. A judgment containing an error in writing or calculation, or any other clerical error, including an error in the description of property, can be corrected by the person who rendered it. The same applies to a judgment that by obvious inadvertence granted more than was claimed or omitted to rule on part of the demand.

The correction can be made on the judge's own initiative as long as execution of the judgment has not begun, or at any time on a party's request, unless an appeal has been initiated. If the person who rendered the judgment has left office or is unable to act, the court can make the correction.

If the correction is to the operative part of the judgment, the time limits for appeal and execution begin to run on the date of the correction.

TITLE II

LEGAL COSTS

336. Legal costs consist of disbursements for court costs and other fees, the notification of proceedings and documents and witness indemnities and allowances, and, if applicable, of expert's fees, interpreter fees and fees for registration in the land register or the register of personal and movable real rights. They also include the cost of the transcription of oral evidence filed in the court record, if such transcription was necessary.

Expert's fees include the cost of writing the report and, if applicable, preparing testimony, and remuneration for the time spent testifying and, to the extent relevant, attending the trial.

337. Legal costs are borne by the parties, each paying its own.

When the court authorizes representation of a child or an incapable person of full age by a lawyer, the representation costs are ruled on by the court according to the circumstances.

The costs pertaining to joint demands are apportioned equally between the parties unless they have agreed otherwise.

338. The court can order a party to pay the legal costs incurred by another party if it is of the opinion that the party did not properly comply with the principle of proportionality or has made an improper use of procedure or that such an order is necessary to permit a fair apportionment of the costs or prevent serious prejudice to a party.

The court can also make such an order if a party breached its undertakings with regard to the conduct of the proceeding, such as by failing to meet time limits, unduly delayed in bringing an incidental demand or filing a notice of discontinuance, needlessly summoned a witness, or refused, without valid cause, to accept genuine offers, acquiesce in the demand, admit the origin or integrity of evidence or participate in a parent and mediation information session.

339. The court, after hearing the parties, can punish serious breaches noted in the course of the proceeding by ordering a party to pay to another party, as legal costs, an amount that it considers fair and reasonable to cover the professional fee of the other party's lawyer or, if the other party is not represented by a lawyer, to compensate the other party for the time spent on the case and the work involved.

340. Legal costs bear interest at the legal rate as of the date of the judgment awarding them and are payable to the party to which they are awarded. If legal costs are awarded against two or more parties, they are solidarily liable for paying them.

341. The party entitled to legal costs prepares a bill of costs based on the tariffs in force and notifies it to the debtor party, which then has 10 days to notify its opposition.

If there is opposition, the bill of costs is sent for taxation to the court clerk, who, to determine the costs, can require that it be shown by evidence by sworn statement or by oral evidence that the costs were incurred. In appeal, legal costs are taxed by the appellate clerk.

Once the bill of costs has been drawn up, a party can ask the court to homologate it. The court clerk's decision can, within 20 days, be submitted for review by the court or, as applicable, by an appellate judge. The bailiff can also, within 20 days after the decision is known, ask for its review as regards costs relating to the bailiff's services.

The decision concerning the taxation or homologation of the legal costs is executed in accordance with the rules of provisional execution.

TITLE III

REVOCATION OF JUDGMENT

CHAPTER I

REVOCATION ON APPLICATION BY PARTY

342. A judgment can be revoked, on the application of a party, on serious grounds that would tend to bring the administration of justice into disrepute, by the court that rendered it. A judgment can be revoked, for example, if it was rendered after a party acted fraudulently, if it was based on false exhibits or if the production of decisive exhibits was prevented by superior force or by the act of a party.

As well, a judgment can be revoked if

- (1) the judgment adjudicated beyond the plaintiff's conclusions or failed to rule on one of them;
- (2) no valid defence was produced in support of the rights of a minor person or a person of full age under tutorship or curatorship;
- (3) the judgment was rendered on the basis of invalid consent or following an unauthorized tender that was subsequently disavowed; or
- (4) new evidence was subsequently discovered that would probably have led to a different judgment if the party concerned or its lawyer had become aware of it in a timely manner.

343. A party against which a default judgment has been rendered on account of failure to answer the summons, attend the case management conference or defend on the merits but that is prevented from doing so owing to fraud, surprise or any other cause considered sufficient can apply to the court that rendered the judgment for the revocation of the judgment and the dismissal of the original demand.

The application for revocation must contain the reasons justifying the revocation as well as the grounds of defence raised against the original demand.

344. An application for revocation is notified to all parties to the proceeding within 30 days after the day on which the cause preventing the party from filing a defence ceases to exist, or after the day on which the party becomes aware of the judgment, evidence or fact that provides grounds for the revocation. In the case of a minor person, the 30-day period begins to run as of notification of the judgment after the person reaches full age.

The application for revocation is presented before the court within 30 days after notification as if it were a demand in the course of a proceeding. It cannot be presented if more than six months have elapsed since the judgment.

These time limits are strict time limits.

345. If the grounds given in support of an application for revocation are found to be sufficient, the parties are restored to their former state and the court proceeds with the original case after agreeing with the parties on a new case protocol.

If circumstances permit, the court can decide the application for revocation and the original demand at the same time.

CHAPTER II

REVOCATION ON APPLICATION BY THIRD PERSON

346. Any person whose interests are affected by a judgment rendered in a proceeding in which neither the person nor the person's representatives were summoned can apply for the revocation of the judgment if it prejudices the person's rights. The application for revocation originates a proceeding before the court that rendered the judgment.

Except if personality rights or the status or capacity of a person are at issue, the application must be presented before the court within six months after the person becomes aware of the judgment. It must be notified to the parties to the original proceeding or, if the application is brought within one year after the judgment, to the persons who represented the parties in the original proceeding.

CHAPTER III

EFFECT OF APPLICATION FOR REVOCATION

347. An application for revocation does not stay execution of the judgment. However, a judge can order such a stay and, in urgent circumstances, can do so without prior notice.

On notification of the application for revocation and the stay order, the executing bailiff immediately ceases the execution process, except for conservatory measures.

TITLE IV

APPEAL

CHAPTER I

INITIATION OF APPEAL PROCEEDING

DIVISION I

INITIATION OF APPEAL

348. The right to appeal belongs to any party to the judgment in first instance having an interest in appealing, unless the party has waived that right. In non-contentious matters, an appeal is also available to third persons to whom the judgment has been notified.

349. An appeal is initiated by filing a notice of appeal with either the Court of Appeal or the court of first instance and notifying the notice to the other court.

If leave is required to initiate the appeal, a request for leave to appeal must be attached to the notice of appeal. If leave is granted, the notice of appeal is deemed to have been filed at the time the judgment granting leave is rendered.

350. The notice of appeal must contain the names of the parties and specify the court appealed from, the judgment date and the duration of the trial in first instance.

The notice of appeal must state the grounds the appellant intends to argue, the conclusions sought and, if applicable, the value of the subject matter of the dispute. Regardless of whether or not leave to appeal is being requested, the notice of appeal must also set out the significant errors in law or fact in the judgment that warrant its modification or reversal.

The notice of appeal must be accompanied by the judgment and, if leave to appeal is being requested, the exhibits and evidence necessary to obtain leave. In addition, the notice of appeal must be filed together with a certificate in which the appellant certifies that no transcript of depositions is necessary for the appeal or states that the appellant has arranged for the transcription of the depositions it intends to use.

351. If the appellant is unable, before the expiry of the time limit for appeal, to provide in the notice of appeal a detailed statement of all the grounds to be argued, a judge of the Court of Appeal, on request and if serious reasons so warrant, can authorize the filing of a supplementary statement within a specified time.

352. A request for leave to appeal is presented without delay and pleaded orally before an appellate judge, who decides whether to grant leave or not. If

leave was not required and the appeal could have been initiated solely by filing a notice of appeal, the notice of appeal attached to the request for leave to appeal is formally recorded by the judge as having been filed with the Court of Appeal.

In either case, the appellant has 15 days as of the judgment to file the certificate concerning the transcription of depositions with the Court of Appeal and to notify it to the adverse party.

If leave to appeal is denied, the judgment must give brief reasons.

The appellate clerk sends the judgment without delay to the court of first instance and to the parties.

353. As soon as a notice of appeal is notified to the court of first instance, the court clerk informs the judge who rendered the judgment concerned and, on the appellate clerk's request, sends the case record without delay to the Court of Appeal, along with an inventory of the exhibits in the record and a list of the relevant entries in the registers.

The court clerk must do so within two days of notification if the appeal concerns a person's release or personal integrity.

354. The notice of appeal, including, if applicable, the request for leave to appeal, is served on the respondent and notified to the lawyer who represented the respondent in first instance. It is also notified to persons with an interest in the appeal as intervenors or impleaded parties.

Within 10 days after the notification, the respondent, the intervenors and the impleaded parties must each file a representation statement giving the name and contact information of the lawyer representing them. If the lawyer who represented the respondent in first instance will not be acting for the respondent, he or she must disclose as much without delay to the respondent, the appellant and the court.

355. A properly initiated appeal stays execution of the judgment, except if provisional execution has been ordered or is provided for by law.

If the sole object of an appeal is to obtain an increase or a decrease in the amount awarded by the judgment, an appellate judge, on request, can order the losing party to comply with the judgment up to the uncontested amount.

356. If a notice of appeal has been filed by a party, another party can initiate an incidental appeal by filing a notice of incidental appeal with the Court of Appeal. An incidental appeal is continued despite the withdrawal or dismissal of the main appeal.

DIVISION II

APPEAL TIME LIMITS

357. A party intending to appeal a judgment must file a notice of appeal and, if applicable, a request for leave to appeal within 30 days after the judgment is given in open court or after a notice that the judgment has been entered in the court registers is notified to the party. The party must also notify the notice of appeal within the same time.

A notice of incidental appeal must be filed and notified within 10 days after service of the notice of appeal or after the date of the judgment granting leave to appeal.

358. The time limit for appealing a judgment that lifts an interlocutory injunction or denies a person's release is 10 days. The time limit for appealing a judgment confirming or quashing a seizure before judgment is also 10 days.

The time limit for appealing a person's release or a judgment granting an authorization relating to personal integrity or ordering confinement for or after a psychiatric assessment is five days.

359. If a party dies before the expiry of the time limit for appeal without having initiated an appeal, the time runs against the successors as of notification of the judgment in first instance.

360. The time limits for appeal are strict time limits, and the right to appeal is forfeited on their expiry.

Nevertheless, a judge of the Court of Appeal can authorize an appeal if not more than six months have elapsed since the judgment and the judge considers that it was impossible for the appellant to act earlier and that the appeal has a reasonable chance of success.

An appellate judge, on request, can suspend the time limits for appeal if the judgment has reserved the plaintiff's right to claim additional damages for bodily injury and there are compelling reasons for an appeal against the judgment and an appeal concerning the demand for additional damages to be heard together. The duration and terms of the suspension are determined by the judge.

DIVISION III

CONDITIONS IMPOSED ON APPEAL AND DISMISSAL OF APPEAL

361. The Court of Appeal or an appellate judge, on their own initiative or on the respondent's request, can authorize an appeal subject to security being provided to guarantee payment of the appeal costs and of the judgment amount if the judgment is affirmed.

The Court or the judge determines the amount of the security and the time limit within which the appellant must provide it, under pain of dismissal of the appeal.

362. The Court of Appeal can, on a demand by the respondent, dismiss an appeal if the right to appeal is non-existent or has been forfeited, if the appeal was not properly initiated, if the judgment has been acquiesced in or a party in whose favour the judgment was rendered has waived the rights arising from it, or if the appeal has no reasonable chance of success or is of an improper nature.

The demand for dismissal must be filed with the Court within 20 days after service of the notice of appeal, and cannot be presented before 30 days have elapsed since its filing. The time limits for preparing the appeal record are suspended until judgment is rendered on the demand for dismissal.

The inadmissibility of an appeal can be urged despite a failure to oppose the appeal within the allotted time.

363. The Court of Appeal can, on the basis of the record, deny a demand for the dismissal of an appeal on the grounds that it has no reasonable chance of success or is of an improper nature. It can also, on the basis of the record, authorize the appeal subject to the conditions it determines, including requiring the appellant to provide security.

CHAPTER II

APPEAL MANAGEMENT

364. An appellate judge can, at any time, on his or her own initiative or on request, convene the parties to confer with them on the advisability of adopting management measures in order to define the issues really in dispute or determine possible ways of simplifying the proceedings and shortening the debate.

After giving the parties the opportunity to make representations, the judge can suggest that they take part in a settlement conference and determine or limit the pleadings and the documents to be filed, setting the time limit for doing so. As well, the judge can set the time limit for preparing the appeal record and decide, despite the rules otherwise applicable, to proceed by way of memorandums or factums and, if necessary, modify time limits prescribed by this Code. In addition, the judge can set the date, time and duration of the hearing.

The management conference is held without formality and requires no prior written documents. It can be held using any appropriate means of communication.

Management decisions are binding on the parties.

365. In matters where the appeal record is to comprise memorandums, the appellate clerk can set the date and time of the hearing and establish a calendar, with the parties, for the filing of documents.

366. At any time during the appeal proceeding, a party can, without formality, request directions from the chief justice for the subsequent conduct of the appeal.

CHAPTER III

APPEAL RECORD

367. The appeal record comprises the notice of appeal, together with either the parties' memorandums or the parties' factums. Barring an exemption from an appellate judge, factums must be preceded by a joint statement of the facts and issues in dispute. The record also comprises all elements necessary to the debate, namely, the pleadings filed for the joining of issues in first instance and the judgment being appealed.

A respondent making an incidental appeal attaches all documents concerning the incidental appeal to the factum or memorandum on the main appeal.

The appeal record is prepared as required by the rules of practice of the Court of Appeal.

368. The appeal record comprises memorandums if the appeal is against a judgment in a matter relating to personal integrity, status or capacity or to habeas corpus, a family matter, an international child abduction matter or a non-contentious or seizure matter, or if the appeal is against an interlocutory judgment. In any other case, the appeal record comprises factums.

A memorandum presents in a concise manner the issues in dispute as well as the party's claims, conclusions and main arguments.

Memorandums are filed with the Court and notified to the other parties within the time limits specified in the appeal management decision made by the appellate clerk or an appellate judge.

369. The parties' joint statement sets out the facts and the issues in dispute and identifies the evidence that is relevant to the appeal. It must be filed with the Court within 45 days after the notice of appeal is filed.

If the parties cannot agree on the facts, the issues or the evidence that is relevant, the appellant files a statement, which is deemed confirmed unless the respondent specifies, within 10 days after the appellant's statement is filed, what should, in the respondent's opinion, be added or deleted.

370. If preceded by a joint statement, a factum sets out the arguments raised and the conclusions sought by the party in relation to the issues in dispute, a

list of the authorities relied on and excerpts from the relevant depositions and exhibits. If not preceded by a joint statement, it must, in addition, set out the facts and the issues in dispute.

371. Factums must be filed with the Court and notified to the other parties within the time limit specified in the appeal management decision made by an appellate judge. In the absence of such a decision, the appellant's factum must be so filed and notified within three months after the notice of appeal is filed and the respondent's factum, within the following two months. Any impleaded party must file a factum within four months after notification of the appellant's factum.

A respondent to an incidental appeal can file and notify a factum in reply to the incidental appeal within two months after notification of the incidental appellant's factum.

An appellate judge can extend a time limit if a request for an extension is made before the time limit expires.

At any time before the hearing, after the memorandums or the joint statement or the factums have been filed, an appellate judge can ask a party to file additional notes in the appeal record.

372. A single copy of the transcript of relevant extracts from the depositions is filed with the Court in paper form, along with the memorandum or factum. If available, the full transcript of all the depositions is also filed with the Court on a technological medium.

373. The appeal lapses if the appellant does not file a memorandum or factum within the filing time limits. The appellate clerk issues a certificate of lapse of appeal, unless a request for an extension is made to the Court of Appeal.

A respondent or impleaded party that does not make a timely filing of its memorandum or factum is precluded from filing and cannot be heard at the hearing unless so authorized by the Court.

CHAPTER IV

CONDUCT OF APPEAL

DIVISION I

DEMANDS IN COURSE OF PROCEEDING AND INCIDENTAL DEMANDS

374. Any demand to be presented to the Court of Appeal or to an appellate judge in the course of a proceeding must be in writing and be notified to the other parties, together with a notice of the date of presentation, at least five days before that date if the demand is to be presented to the Court or at least

two days before that date if it is to be presented to an appellate judge or the appellate clerk.

375. Incidental demands available in first instance can be presented on appeal, insofar as they are applicable.

An appellate judge sitting alone is competent to decide incidental demands, except those that are substantive.

However, an appellate judge sitting alone or the appellate clerk is competent to rule on a request to cease representing a party, for a substitution of lawyer or for the joinder or severance of appeals, or on an appeal management request for the setting or extension of time limits or for authorization to file a supplementary statement. In all cases, the appellate clerk can refer a request to a judge, or the judge, to a panel of the Court, if the clerk or judge considers that the interests of justice so require. Such requests are filed by means of a letter and notified to the other parties.

376. At any time in the course of an appeal proceeding, an appellate judge can issue an order to safeguard rights of the parties or authorize the correction, within the time and on the conditions he or she determines, of any irregularity in the proceeding as long as the notice of appeal has been duly filed and notified.

377. The Court can authorize a party to present indispensable new evidence after giving the parties an opportunity to make submissions.

The Court sets the terms for doing so, and can even refer the case back to the court of first instance for the submission of additional evidence.

DIVISION II

SETTLEMENT CONFERENCE

378. On the parties' request, an appellate judge can, at any time, preside over a settlement conference to assist the parties in resolving their dispute.

Notice of the settlement conference is given to the appellate clerk by the parties, and the holding of the conference suspends the time limits prescribed by this Title.

379. A settlement conference is held in camera in the presence of the parties and of their lawyers. It is held at no cost to the parties and without formality and requires no prior written documents. Anything said, written or done during the conference is confidential. All other rules governing the conference are defined by the judge and the parties.

A transaction terminating a case is submitted to the Court by the appellate clerk in order to be homologated and made enforceable.

DIVISION III

SETTING DOWN FOR HEARING

380. The appellate clerk sets an appeal down for hearing as soon as it is ready to be heard, that is, once all factums or memorandums have been filed in the record, or when the Court so orders.

If the appeal concerns a person's release or personal integrity, it is set down to be heard at the earliest opportunity after the appellant's memorandum is filed.

If the respondent has not filed or notified a memorandum or a factum within the allotted time, the appeal is nevertheless set down for hearing.

An appellate judge or the appellate clerk can strike an appeal from the roll and defer the hearing to a later date.

381. The Court or an appellate judge, on their own initiative or on the parties' request, can decide that the appeal will be decided on the basis of the record.

In such a case, the appellate clerk informs the parties of the date on which the appeal is taken under advisement and of the identity of the judges on the panel. At any time during the advisement period, the judges can ask the clerk to set the appeal down for hearing if they consider that a hearing is necessary.

DIVISION IV

HEARING

382. The appellate clerk informs the parties of the hearing date and specifies the time allotted to each party for oral argument.

383. The Court hears the parties in a three-judge panel, although the chief justice can increase that number as he or she considers appropriate.

An appellate judge cannot hear an appeal if he or she was the trial judge in first instance or presided over a settlement conference concerning the matter.

CHAPTER V

DECISION

384. A decision is rendered by the Court when a majority of the judges having heard the appeal concur. The decision can be given in open court by the judge who presided over the appeal hearing, even in the absence of the

other judges. Alternatively, it can be deposited at the office of the Court under the signature of all or the majority of the judges who heard the appeal.

The appellate clerk informs the parties without delay that a decision has been rendered and sends it to the court of first instance along with the record.

All decisions of the Court and its judges are subject to the rules of Title I governing judgments, with the necessary modifications.

385. The fact that one of the judges who heard the appeal cannot make his or her opinion known does not prevent the other judges from rendering a decision, if they are sufficient in number. Otherwise, the chief justice can order a new hearing if the interests of justice so require.

A judge who is unable to act or has left office, including because of an appointment to another court, can nonetheless participate in the decision.

386. In addition to the operative part, every decision of the Court must contain the names of the judges who heard the appeal and mention who among them does not concur in the opinion of the majority.

The decision must give reasons, unless it refers to one or more opinions issued by the judges.

387. The decision is enforceable immediately and bears interest from the date it is rendered, unless it specifies otherwise. Its execution, as regards both the principal and any legal costs, is carried out by the court of first instance.

However, the Court or one of its judges, on a demand, can order execution stayed, on appropriate terms, if the party establishes its intention to apply for leave to appeal to the Supreme Court of Canada.

BOOK V

RULES APPLICABLE TO CERTAIN CIVIL MATTERS

TITLE I

DEMANDS IN MATTERS GOVERNED BY LAW OF PERSONS

CHAPTER I

GENERAL PROVISIONS

388. A person of full age or a minor person 14 years of age or older who is the subject of a demand relating to personal integrity, status or capacity must, unless it is impossible, before a determination is made by the court or minutes are drawn up by the notary, as applicable, be heard in person for the purpose of giving his or her representations or opinion or being examined.

The court seized of the demand can delegate the responsibility of hearing the person and recording the answers to a judge or a court clerk in the judicial district where the person resides or to a notary practising in that district. The transcript of the examination or the minutes are sent to the court or to the notary seized of the matter, to the person who presented the demand and, if applicable, to the meeting of relatives, persons connected by marriage or civil union and friends, and to any other interested persons.

If a notary is seized of the demand, he or she cannot delegate the responsibility of hearing the person except in order to avoid unduly high travel expenses in the case of a person of full age who lives in a remote location; however, if not sufficiently fluent in the person's language, the notary can mandate a notary who speaks the language, or else request the services of an interpreter. The notary who hears the person draws up minutes of the hearing, translated into French or English as required.

389. In matters relating to personal integrity, status or capacity, the demand must be accompanied by a notice, in the form determined by the Minister of Justice, informing the person concerned of his or her rights and obligations. The court bailiff who serves the demand must draw the person's attention to the content of the notice.

CHAPTER II

DEMANDS RELATING TO PERSONAL INTEGRITY

DIVISION I

CARE AND CONFINEMENT IN INSTITUTION

390. A demand to obtain a court authorization for care required by the state of health of a minor person or a person of full age incapable of giving consent cannot be presented before the court less than five days after the demand has been notified; the same applies to a demand concerning the alienation of a body part of such a person. A demand concerning a person's confinement in a health or social services institution for or after a psychiatric assessment cannot be presented less than two days after the demand has been notified.

In any such instance, the court can shorten the minimum time lapse between the notification and the presentation of the demand.

391. The court is not required to examine the person who is the subject of a demand requesting a psychiatric assessment if it is clearly inexpedient given the urgency of the situation or the person's state of health, or if it is shown to the court that it could be harmful to the person's health or safety or to that of other persons.

392. A judgment ordering a person's confinement for or after a psychiatric assessment is enforceable immediately. A judge of the Court of Appeal can, however, suspend execution of the judgment.

The court clerk sends a copy of the judgment and of the record without delay to the Administrative Tribunal of Québec, at no cost to the parties. In addition, the judgment is notified to every person to whom the demand was notified. It can be executed by a peace officer.

DIVISION II

HABEAS CORPUS

393. Any person deprived of liberty without it having been ordered by a decision of the competent court can institute a demand requesting the Superior Court to rule on the lawfulness of the detention and to order his or her release if the detention is unlawful. A third person can act on the person's behalf.

The summons directs the detaining authority to appear before the court on the date specified in order to explain the grounds for the detention.

If the deprivation of liberty is due to confinement in an institution governed by health services and social services legislation or to detention in a correctional facility or a penitentiary, the demand must be notified to the Attorney General, together with a notice of the date of presentation.

394. The demand must be tried on the day it is presented. The plaintiff's evidence can be adduced by sworn statement.

If the court considers that the Attorney General has a sufficient interest, it orders that the demand be notified to the Attorney General and adjourns the trial to an early date.

395. If the demand cannot be tried on the day it is presented, the court can authorize the person's immediate release; however, if the person is in detention, the court can require that security be given to ensure his or her attendance at the trial and compliance with any orders that may be issued.

396. A habeas corpus order must be served personally, unless circumstances prevent it, in which case the court determines the mode of notification it considers most appropriate.

397. The judgment of the court is enforceable on the expiry of the time for appeal or as soon as the opposite party and the Attorney General, if party to the proceedings, indicate that they do not wish to appeal, or acquiesce in the judgment.

If there is an appeal, the court or a judge of the Court of Appeal can order the person's provisional release and set the conditions of release.

CHAPTER III

DEMANDS RELATING TO PERSONAL STATUS AND CAPACITY

398. To be admissible, a demand for the review of a decision of the Registrar of Civil Status must be brought within 30 days after the decision is notified to the plaintiff. The Registrar of Civil Status sends the relevant record to the court without delay.

399. A demand for the institution of protective supervision must be notified to the persons who are required to be called to a meeting of relatives, persons connected by marriage or civil union and friends when a tutorship council is to be established.

The demand must also be notified to the Public Curator together with the expert's reports supporting it. Failing such notification, the court clerk suspends the proceeding until the court receives proof of the notification.

The Public Curator, on the Public Curator's own initiative and without notice, can take part in the trial of the demand.

400. If it is necessary to establish a tutorship council, a meeting of relatives, persons connected by marriage or civil union and friends is called for that purpose by the special clerk or the notary who is to preside the meeting.

The notice of meeting, notified to the persons who are required to be called to establish a tutorship council, must state the purpose, place, date and time of the meeting. The date of the meeting cannot be less than 10 days nor more than 30 days after notification of the notice.

As soon as the tutorship council is established, and subsequently whenever there is a change in its composition, it provides the names and contact information of the council members and secretary to the person represented, if 14 years of age or older, his or her representative, and the Public Curator.

401. Notification to the tutorship council is made to its secretary.

On receiving notification of a demand for the review of a decision of the tutorship council, the secretary forwards the relevant minutes and record to the court without delay.

402. The Public Curator can institute a demand for the institution of protective supervision and propose a suitable person to assist or represent the person of full age as provided for in section 14 of the Public Curator Act (R.S.Q., chapter C-81) if, within 30 days after the Public Curator's recommendation to that effect has been filed with the court, the court clerk informs the Public Curator that no other person has instituted such a demand.

403. The court seized of a demand for the homologation of a protection mandate is required to verify the mandator's incapacity, the existence of the mandate and, if the mandate was given before witnesses, its validity.

CHAPTER IV

LEGAL PERSONS

404. The Attorney General or any interested person can ask the court to annul a legal person's constituting act or impose any other penalty prescribed by law if

- (1) the legal person was not constituted in accordance with the law;
- (2) juridical personality was obtained unlawfully or by fraud or was granted in ignorance of a material fact;
- (3) the legal person, its founders or their successors or its directors or officers repeatedly act in contravention of the laws governing them, or exercise powers beyond those conferred on the legal person; or
- (4) the legal person performs or omits to perform an act the performance or omission of which amounts to a waiver of its rights.

The Attorney General or any interested person can also ask the court to annul any instrument amending a legal person's constituting act and any related certificate if the amending instrument contains unlawful provisions or false or erroneous statements.

405. The judgment annulling a legal person's constituting act must appoint a liquidator to liquidate the legal person's assets as provided in the applicable legislation or in the Civil Code. The judgment is notified to the enterprise registrar.

The legal costs are paid out of the legal person's patrimony and, if it is insufficient, out of the personal patrimony of its directors and other officers. However, when a judgment declares a legal person without share capital to have been unlawfully constituted, the legal costs constitute a personal debt of the persons forming the legal person.

TITLE II

DEMANDS IN MATTERS GOVERNED BY FAMILY LAW

CHAPTER I

RULES GOVERNING DEMAND AND PROCEEDING

406. Demands under the Divorce Act (Revised Statutes of Canada, 1985, chapter 3, (2nd Supplement)) and under Book Two of the Civil Code are governed by the general rules that apply to all judicial demands, subject to the provisions of this chapter.

407. A demand for separation as to property, separation from bed and board, divorce, the dissolution of a civil union or the annulment of a marriage or civil union can be declared to the registrar by either of the spouses. Such a demand must be so declared if one of the spouses claims to have a right in an immovable under the marriage or civil union regime or if the immovable serving as the family residence is the property of one of the spouses.

The demand is declared by notification of a notice to the registrar, which the registrar registers in the land register. If one of the spouses requests the cancellation of the registration, it can be ordered provided, if necessary, that adequate security is given.

408. An originating demand whose conclusions pertain exclusively to a support obligation, child custody or provisional or ancillary measures cannot be presented before the court less than 10 days after it is notified. The demand is tried and determined by preference.

If the demand is joined with a demand for separation from bed and board, divorce, the dissolution of a civil union or the annulment of a marriage or civil union, it is heard in the same manner as any other demand in the course of a proceeding.

409. Demands relating to patrimonial rights arising from cohabitation can be joined with a demand relating to child custody or parental support obligations if the parents were de facto spouses before the demand was instituted.

410. If one of the conclusions sought in a demand is the partition of family patrimony, each party must attach to the case protocol a statement listing all its property and, for each item, whether it is included in the family patrimony.

If a party files a demand seeking support for itself, the demand cannot be decided unless the party files an income and expense statement and a balance sheet with the court at least 10 days before the demand is presented. The adverse party must file such a statement and balance sheet at least five days before the presentation date, unless it admits having the means to pay the amount sought;

even when a party admits as much, the court can ask that it produce a statement.

411. The parties can adduce their evidence by sworn statement. Each party can file only one sworn statement but the plaintiff can produce a second one if the defendant has also chosen to proceed in this manner. Any further sworn statements must be authorized by the court.

412. When ruling on an agreement in a family matter, the court must verify that each party has given its consent freely and that the agreement sufficiently protects the interests and rights of the parties and the children.

For that purpose, the court can summon and hear the parties, separately or together, in the presence of their lawyers.

413. The court can order either party to pay to the other party a provision for the costs of the proceeding if the circumstances so warrant, as when the court notes that without such assistance the other party's financial situation would prevent it from effectively presenting its case.

CHAPTER II

MEDIATION IN COURSE OF PROCEEDING

DIVISION I

PARENT AND MEDIATION INFORMATION SESSION

414. Any case in which the interests of the parties and their children are at stake in connection with child custody, support owed a spouse or a child, the family patrimony, other patrimonial rights arising from the marriage or civil union or the partition of property between de facto spouses cannot go to trial unless the parties have jointly or separately participated in a parent and mediation information session.

Parties that have already participated in mediation in relation to a prior dispute or have entered into mediation with a certified mediator on their own initiative are exempted from participating in such an information session. However, the court, in the children's interest, can order the parties to participate in such an information session.

415. The information session deals with parenting issues, such as the effects of conflict on the children, and with the parental responsibilities of parties. It also explains the nature and purpose of mediation, the process involved and how the mediator is chosen.

416. The information session consists in a group session led by two mediators certified in accordance with the regulations under article 624, only

one of whom must be a lawyer. The session can be held using any appropriate technological means available.

If the parties wish to participate in separate sessions, their wish must be respected.

After the session, a participation certificate is issued by the Family Mediation Service.

DIVISION II

MEDIATION

417. The parties can decide on their own to enter into mediation with a certified mediator, whom they choose jointly.

418. The court can order mediation at any stage of a proceeding. When ordering mediation, the court refers the parties to the certified mediator of their choice or asks the Family Mediation Service to intervene and work with the parties.

Before ordering mediation, the court considers such factors as whether the parties have already met with a certified mediator, whether the balance of power between the parties is equal, whether there have been incidents of family or spousal violence and whether mediation is in the best interests of the parties and of their children.

419. On ordering mediation, the court can adjourn the trial for not more than three months. On or before the expiry of that time, if mediation has not begun or if it has been ended, the court can continue the trial or, with the parties' consent, extend the adjournment for the time it specifies.

The judge who adjourned the trial or referred the parties to mediation remains seized of the matter, unless the chief justice or chief judge decides otherwise.

420. When intervening at the court's request, the Family Mediation Service appoints a mediator and sets the date of the first meeting within 20 days after mediation is ordered. A mediator chosen by the parties is required to begin the mediation within 20 days after the trial is adjourned.

421. If the parties do not enter into mediation within the allotted time or if they put an end to mediation before the dispute has been settled, the mediator files a report with the court. The mediator also sends the report to the Family Mediation Service and, within the following three days, to each of the parties and their lawyers.

The adjournment of the trial ends on the filing of the report with the court. The court clerk enters a notice in the court register, then informs the judge

seized of the matter and gives him or her the case record so that a trial date can be set.

DIVISION III

MEDIATION REPORT AND MEDIATOR'S FEE

422. At the end of mediation, the mediator signs and dates the mediation report, files it with the Family Mediation Service and sends it to the parties and their lawyers.

The report gives an account of the parties' attendance and specifies the points, if any, on which an agreement has been reached. It must contain no other information.

423. In the cases specified in the regulations under article 624, the Family Mediation Service bears all or a portion of the mediator's fee. In any other case, the fee is apportioned between the parties based on their respective income or according to their agreement, unless the court orders otherwise.

CHAPTER III

PSYCHOSOCIAL ASSESSMENT

424. In any family law case in which the interests of a minor child are at stake, the court, on its own initiative or on a demand, can order the Psychosocial Assessment Service of the Superior Court to appoint an expert to enlighten the court on any custody-related or other issue affecting the child.

The assessment order must define the expert's mission and set the time limit within which the expert's report is to be submitted to the Psychosocial Assessment Service, which must not exceed three months after the date of the expert's appointment.

425. The court clerk immediately notifies the judgment containing the assessment order as well as the other relevant documents to the Psychosocial Assessment Service. The service appoints an expert and gives the expert's name to the judge who issued the order or to the chief justice or chief judge.

426. The Psychosocial Assessment Service takes all the necessary measures to ensure that the appointed expert complies with the time limit set for submitting his or her report.

However, if the expert shows that it was actually impossible to submit the report within the time limit set, he or she can, after informing the Service, ask the court to extend the time limit. If an extension is granted, the court clerk so informs the Service.

427. The expert files the report with the Psychosocial Assessment Service, which forwards it to the court clerk. The court clerk sends the report to the judge who ordered the assessment or, if that judge is no longer seized of the matter, to the chief justice or chief judge or the judge appointed by him or her, and to the parties.

428. As provided in section 19 of the Act respecting health services and social services (R.S.Q., chapter S-4.2), the court can order an institution to give an appointed expert access to any information in a user's record that is necessary for the purpose of the expert's mission.

CHAPTER IV

JOINT DEMAND FOR SEPARATION FROM BED AND BOARD, DIVORCE OR DISSOLUTION OF CIVIL UNION ON BASIS OF DRAFT AGREEMENT

429. Spouses can submit to the court for approval a draft agreement, dated and signed by them, that provides a complete settlement of the consequences of their joint demand for separation from bed and board, divorce or dissolution of their civil union.

The draft agreement is in effect from the date of the demand to the date of the judgment, subject to any provisional measures that the spouses have set out in it.

The draft agreement must identify the liquidator of the matrimonial or civil union regime, if one is required.

430. The joint demand lapses if, following an adjournment order, the spouses fail to present an amended draft agreement within three months or any other time limit set by the court. The joint demand also lapses if one of the spouses discontinues the joint demand and neither of them amends the demand and continues the proceeding within the following three months.

CHAPTER V

DEMANDS RELATING TO ADOPTION

DIVISION I

PROVISIONS APPLICABLE TO ADOPTION UNDER GENERAL CONSENT

431. A demand for the adoption of a minor child must be notified to the director of youth protection having jurisdiction in the child's place of residence or, if the child is domiciled outside Québec, in the adopter's place of domicile.

If notice of the demand must be notified to another party or to an interested person, it is notified by the director. The notice must ensure that the adopters remain anonymous to the parents or the tutor and vice versa, and must state the purpose of the demand, the grounds on which the demand is based and the conclusions sought.

432. The court admits to its hearings any member of the Commission des droits de la personne et des droits de la jeunesse or any other person expressly authorized by the Commission to attend. Such a person cannot disclose, or be compelled to disclose, anything that was said or that occurred at a hearing.

433. A demand for the return of a child brought by a person who gave general consent to adoption and did not withdraw it within the prescribed time must be notified to the director of youth protection. The director gives notice of the demand to the person having or exercising parental authority, to the father or mother if they no longer have parental authority and, if applicable, to the tutor.

In any proceeding, unless all parties agree otherwise, the court must take all necessary measures to ensure that the persons demanding the child's return never meet the adopters face to face and can never identify them or be identified by them.

DIVISION II

DEMAND FOR DECLARATION OF ELIGIBILITY FOR ADOPTION

434. A demand for a declaration of eligibility for adoption concerning a child 10 years of age or older is notified to the child if the judge so orders.

DIVISION III

DEMAND FOR PLACEMENT AND ADOPTION

435. A demand for placement of a child is presented by the adopter and the director of youth protection; in the case of special consent to adoption, the demand can be presented by the adopter alone.

A demand for placement of a child can also be presented by the child's parent alone, or by a spouse who alone presented a demand for a declaration of eligibility for adoption in accordance with article 560 of the Civil Code.

436. A notice of the demand for placement, stating the plaintiff's name and place of domicile, must be notified to the child concerned if he or she is 10 years of age or older. The director of youth protection notifies a notice of the demand to the child's father, mother or tutor if they are domiciled in Québec and consented to the adoption in the year preceding the demand.

In the case of special consent to adoption or of consent arising out of a declaration of eligibility for adoption, the notice of the demand for placement is notified by the plaintiff.

437. A demand for the revocation of a placement order is notified to the director of youth protection, who gives notice of the demand to the adopter and to the person whose adoption is sought.

In the case of special consent to adoption, the demand for revocation is notified to the adopter and to the person whose adoption is sought if he or she is 10 years of age or older.

438. If the director of youth protection files with the court a report stating that the child has not adapted to his or her adoptive family, the court sends the report to the adopter and, if applicable, to the child's tutor or lawyer, and informs them of the time within which they can contest the report.

If it considers it appropriate, the court can send the report to the person whose adoption is sought if the person is 14 years of age or older; it is required to do so if it intends to dismiss the demand for adoption on the basis of the report.

439. A party instituting a demand for recognition of an adoption order made outside Québec can, together with the demand, file ancillary demands such as for a change of the adoptee's name or given name and the alteration of the register of civil status.

CHAPTER VI

DEMANDS RELATING TO SUPPORT OBLIGATIONS

440. The Government, by regulation, establishes standards for determining the child support payable by a parent. The standards are established on the basis of, among other factors, the combined basic contribution that should be required of the parents in respect of the child, child care expenses, postsecondary education expenses, special expenses for the child and the custodial time of each parent.

The Minister of Justice prescribes and publishes in the *Gazette officielle du Québec* the statement and the support determination form that the parties are required to file. The Minister also prescribes and publishes a table allowing the combined basic parental support contribution to be determined on the basis of the parents' disposable income and the number of children they have. The Minister also identifies the documents that must be enclosed with the forms.

441. No demand relating to a support obligation or defence against such a demand can be heard unless the plaintiff's or, as applicable, the defendant's statement containing the required information has been filed with the court. The statement of a support creditor who is a minor is made by the person acting

for the minor. If the demand or defence relates to the parental child support obligation, the support determination form and the prescribed documents must also be filed. The court can relieve the defendant from failure to file any of those documents on the conditions it determines.

No ruling on a support obligation can be made unless each party has filed its statement and, if applicable, support determination form.

442. Unless the parties are acting jointly, the plaintiff parent notifies the demand, together with the prescribed documents, to the other parent. After receiving notification of the demand, the latter must in turn notify his or her documents to the plaintiff at least five days before the demand is presented.

443. If the particulars in a prescribed document are incomplete or contested, or in any circumstances it considers it necessary, the court can supplement the information. The court can, for example, determine a parent's income by considering, among other things, the value of his or her assets and the income they generate or could generate, as it considers appropriate.

444. Child support is determined without consideration of any spousal support that may be claimed by either parent.

A judgment awarding child support and spousal support must clearly distinguish the amount to be paid in child support and the amount to be paid in spousal support.

445. Parents who agree on an amount of child support that differs from the amount that would be required under the child support determination rules must clearly set out, in their agreement and in the support determination form, the reasons for the difference.

If the judgment awards child support that does not reflect the parents' agreement or, in the case of a contested demand, the particulars in the forms filed by the parents, the judgment must clearly state the reasons for the difference and refer, if applicable, to the relevant sections of the form.

446. If an agreement is reached in the course of a proceeding relating to a support obligation and one of the parties is receiving benefits under a social assistance or social solidarity program created under the Individual and Family Assistance Act (R.S.Q., chapter A-13.1.1), that party must state as much in the agreement. If a party was receiving benefits under such a program during any period covered by the agreement, that fact must also be stated in the agreement.

447. As soon as a judgment awarding support or varying a judgment awarding support is rendered, the court clerk enters the relevant information contained in the judgment and statements in the register of support payments and sends the statements to the Minister of Revenue with the judgment.

The information entered in the register of support payments is confidential.

448. If a judgment awarding support so directs, the parents must provide each other with a statement of their income once a year, on the date and according to the terms specified by the court, or if none are specified, on the anniversary of the judgment.

In a judgment varying the support awarded, the court can require the debtor parent to pay any amounts owing starting on the date it determines, but that date must not be earlier than the date on which the debtor failed to comply with the requirement to provide information.

CHAPTER VII

DEMANDS RELATING TO PARENTAL AUTHORITY

449. A demand for deprivation of parental authority or for withdrawal of an attribute of parental authority or of the exercise of such an attribute must be notified to the director of youth protection having jurisdiction in the child's place of residence. The director can then intervene as of right as regards the demand.

A demand by the mother and father, or by either parent, to have withdrawn rights restored must be notified not only to the person having parental authority or, as applicable, to the child's tutor, but also to the persons who were party to the demand on the basis of which the rights were withdrawn.

450. The court, even on its own initiative, can order the establishment of a tutorship council so that it may seek its advice on the designation of a person to hold parental authority or on the appointment of a tutor.

CHAPTER VIII

JUDGMENT

451. When pronouncing a separation from bed and board, the annulment of a marriage, a divorce or the annulment or dissolution of a civil union, the court determines ancillary demands, such as demands relating to the custody, maintenance or education of the children or to child or spousal support. At the same time or at a later date, if warranted by the circumstances, the court rules on issues relating to family patrimony and other patrimonial rights arising from the marriage or civil union.

452. A court that is asked to homologate an agreement or a draft agreement between the parties can amend the agreement or draft agreement on the basis of the interests of the children or of one of the spouses. The court can also postpone its decision until the parties have amended the agreement or draft agreement or deny homologation, in which case the proceeding continues.

453. A judgment ordering the drawing up or correction of an act of civil status or the alteration of the register of civil status must set out the entries to be made in the register. The judgment is binding on the registrar of civil status as a matter of course.

454. The court clerk notifies a judgment pronouncing a separation as to property, a separation from bed and board, the annulment of a marriage, a divorce or the annulment or dissolution of a civil union to the registrar of civil status, the personal and movable real rights registrar, the Régie des rentes du Québec, the depositary of the original of the marriage contract or civil union contract and the depositary of the original of any contract modifying the matrimonial or civil union regime.

The depositary is required to bring to the attention of persons who refer to the original or a copy of the contract the fact that a judgment has been rendered in connection with the contract and to give them the information needed to access the judgment, including the judgment date and court record number and the judicial district and court in which the judgment was rendered.

455. If a judgment varying ancillary measures is rendered in a different judicial district than the one in which the initial judgment was rendered, the court clerk sends the judgment to the court clerk of the district in which the initial judgment was rendered.

CHAPTER IX

OPPOSITION TO MARRIAGE OR CIVIL UNION

456. A demand for authorization to make matrimonial or civil union agreements must be notified to interested persons at least five days before the date of presentation of the demand. The proposed contract and, if applicable, the opinion of the tutorship council must accompany the demand.

457. An opposition to a marriage or civil union must be notified, at least five days before the date of its presentation, to the officiant, to the intended spouses and to any person who must consent to the solemnization of the marriage or civil union.

Unless it is abusive, the judge admits the opposition and sets an early hearing date. Admission of the opposition stays the solemnization of the marriage or civil union. If the opposition is not presented on the scheduled date, any party can obtain a default certificate from the court clerk. On receiving the default certificate, the officiant can proceed with the solemnization.

In dismissing an opposition, the court, on a demand, can immediately order the opposer to pay damages or can schedule a date to hear evidence on damages. A judgment dismissing an opposition cannot be appealed.

TITLE III

DEMANDS RELATING TO SUCCESSIONS, PROPERTY, SECURITY AND EVIDENCE

CHAPTER I

PROBATE OF WILLS AND LETTERS PROBATE

DIVISION I

PROBATE OF WILLS

458. When it would prove impractical or too costly to call all the known successors to the probate of a will, the court clerk can grant an exemption from that requirement and determine the persons to be notified by the plaintiff or the notary seized of the probate demand.

459. If the original of the will is held by or deposited with a third person, the court clerk can order the person to file it with the court or to deliver it to the notary designated by the court clerk so that he or she may examine the will.

460. A will probated by the court is deposited at the court office. The court clerk issues certified copies of the will, the judgment probating the will and any evidence produced in support of the probate demand to any interested person on request.

A will probated by a notary is attached to the minutes of the probate and kept in the notary's records. The notary issues certified copies of the will and minutes of the probate to any interested person on request.

461. A probated will can subsequently be contested by any interested person who did not oppose the probate demand or who, having opposed it, raises grounds he or she was not in a position to assert at the time.

DIVISION II

LETTERS PROBATE

462. Any interested person can institute a demand for letters probate, for use outside Québec, to prove his or her capacity as heir, legatee by particular title or liquidator of the succession.

The letters probate certify that the succession has opened and identify the liquidator of the succession. In the case of an intestate succession, the letters probate also certify that the property of the deceased devolves to the persons listed in the proportions stated. In the case of a testamentary succession, the letters probate certify that it has been established that the will, a copy of which is attached to the letters probate, is the only will made by the deceased or the

last will made by the deceased; in the latter case, they certify that the will revokes previous wills in whole or in part.

463. The demand for letters probate is notified to the liquidator of the succession, if known, and to all the known heirs and legatees by particular title who are resident in Québec.

464. Letters probate can be revoked or corrected on a demand by any interested person who did not oppose their issue or who, having opposed it, raises grounds he or she was not in a position to assert at the time.

465. The court clerk or the notary issues certified copies of letters probate to any interested person on request. However, if the letters probate are contested, no copies can be issued until the demand is disposed of.

If a judgment rectifies letters probate, the court clerk issues new letters probate to replace the initial ones.

CHAPTER II

DEMANDS RELATING TO PUBLICATION OF RIGHTS

466. A demand relating to registration in the land register or in the register of personal and movable real rights, or to the correction, reduction or cancellation of an entry in either register, must be supported by a statement, certified by the registrar, setting out the rights entered in the register in respect of the property, the nature of the universality, or the name of the grantor.

467. A demand relating to acquisitive prescription of an immovable must be supported by a recent statement, certified by the registrar, setting out the rights entered in the land register in respect of the immovable and by a copy of or an extract from the cadastral plan.

If the immovable is not immatriculated or if the immovable is a part of a lot, a technical description of the immovable and the related plan, both prepared by a land surveyor, must be filed with the demand; if a construction has been erected on the immovable, a location certificate must also be filed.

The court that is to determine the right of ownership can, even on its own initiative, order a determination of the boundaries of the immovable if the accuracy of the plan is contested by the owners of the adjoining immovables.

CHAPTER III

BOUNDARY DETERMINATION

468. A formal notice for the determination of boundaries must specify what is demanded and the reasons for it, without any reference to disturbances, damages or other claims. It must describe the immovables concerned and

include the name and contact information of the land surveyor proposed for the performance of the operations.

If, following the formal notice, the owners agree to a boundary determination and on the choice of a land surveyor, they set out their agreement in a document stating the reasons for the boundary determination, describing the immovables concerned and identifying the land surveyor.

In the absence of an agreement, the person who sent the formal notice can ask the court to rule on the right to a determination of boundaries and designate a land surveyor.

469. The land surveyor chosen by the parties or designated by the court performs all the operations necessary to determine the boundaries of the immovables. The land surveyor draws up minutes of the operations performed. The minutes constitute the surveyor's report and must include a plan of the premises, state the respective claims of all the owners concerned and establish the boundary lines the surveyor considers most appropriate. The land surveyor notifies a copy of the report to the owners and informs them of the effect of the report remaining uncontested.

470. If owners who agreed to a boundary determination and on the choice of a land surveyor accept the land surveyor's report, they can apply for registration of the report in the land register. A report so registered has the same force and effect as a judicial determination of boundary lines.

If one of the owners does not accept the land surveyor's report, any of them, within one month after its notification, can present a demand for a boundary determination before the court; otherwise, the report is deemed to be accepted.

471. The court seized of a demand for a boundary determination determines the boundary lines between the immovables. The court appoints a land surveyor, who places boundary markers in the presence of witnesses, draws up minutes of the operations performed and files them with the court; the minutes provide proof of the execution of the judgment.

The judgment determining the boundary lines transfers ownership; it is notified to the minister responsible for the cadastre.

472. If, in the course of the proceeding, one of the owners transfers the rights held by that owner in the immovable that is the subject of the boundary determination, the transferee can be compelled to a continuance.

473. If a boundary determination may affect immovables that are not adjoining to the plaintiff's immovable, the court, even on its own initiative, can order the owners of the non-adjoining immovables to intervene in the matter. A land surveyor appointed by the parties can ask the court to order such intervention.

474. The costs of a boundary determination are common costs and shared in proportion to the length of the determined boundary of each immovable.

CHAPTER IV

CO-OWNERSHIP AND PARTITION

475. In granting a demand for the partition of undivided property, the court can order either a partition in kind or the sale of the property.

The court can appoint an expert to assess the value of the property, divide the property into lots and distribute the lots, if the property can conveniently be divided and distributed, or to sell the property, on the terms determined by the court. On completion of the operations, the expert prepares a report, files it with the court and delivers a copy to the co-owners.

The expert must have the report homologated; the homologation demand can be contested by any interested person. When homologating the report, the court can, if necessary, direct the court clerk or any other person it designates to hold a drawing of the lots; minutes of this operation must be filed in the court record.

476. A demand relating to divided co-ownership of an immovable must be notified to the syndicate of co-owners, which must inform all the co-owners of the subject matter of the demand within five days after the notification.

CHAPTER V

SAFETY DEPOSIT BOXES

477. A person cannot open a safety deposit box leased by another person in a financial institution unless authorized to do so by that person or, if he or she is deceased, by the liquidator of the succession or, in the absence of a liquidator, by the successors. A person can open such a safety deposit box if authorized by the court to do so.

The court grants its authorization only if it is satisfied that the demand for authorization has been notified to all those who may have rights in the property contained in the safety deposit box or that sufficient effort has been made to reach them. The court can authorize the opening of the box subject to the conditions it specifies.

When the safety deposit box is opened, a notary or a bailiff draws up minutes stating the names of the persons present and describing the contents of the box and the property removed.

478. Before the safety deposit box is opened, the plaintiff must pay to the lessor an amount sufficient to cover the cost of opening the box and any restoration costs.

CHAPTER VI

DEMANDS RELATING TO SECURITY

479. A demand relating to security must be supported by a recent statement from the relevant register, certified by the registrar.

480. A judgment ordering the forced surrender of property specifies the time within which, the manner in which and the person to whom the property is to be surrendered. The judgment also orders that, on failure to surrender the property within the time specified, the debtor or the owner or holder of the property be evicted, or the property be taken away from the person, as applicable.

In an urgent situation, the court can authorize the creditor to take immediate possession of the property for administration purposes, to take it in payment, to sell it privately or to sell it by judicial sale.

481. An order to surrender property issued even before the expiry of the time specified in the prior notice of the exercise of a hypothecary right can be annulled by the court on the demand of the owner or holder of the property if the allegations made in the original demand on the strength of which the order was issued are insufficient or false.

The demand for the annulment of the order must be notified to all the parties to the proceeding within five days after the notification of the order.

If the order is annulled, the creditor is required to return the property or pay back the alienation price, as applicable.

482. When the identity of the owner or one of the owners of hypothecated property is unknown or uncertain and the demand was notified by public notice, the court can, if no one contests the demand or exercises the rights of the hypothecary debtor or the person against whom a right may be exercised, authorize the creditor to exercise a hypothecary right.

CHAPTER VII

COPIES OF OR EXTRACTS FROM NOTARIAL ACTS

483. Notaries are required, subject to payment of their fees and expenses, to give access to, or issue copies of or extracts from, acts that form part of their records, or of records of which they are the assignee or custodian, to the parties, their heirs or their representatives.

Notaries are not required, however, to give access to or issue a copy of a will that has been revoked or of an act that is not required to be published, unless ordered by the court or requested by the testator or a party to the act.

484. If a notary refuses or fails to respond, any person who establishes a right or an interest can request a court order directing the notary to give access to or issue a copy of or extract from an act.

The order specifies the date and time when access must be given to the act. It must be notified on a timely basis to the notary; the notary certifies on the act that he or she is acting on the order of the court.

CHAPTER VIII

RECONSTITUTION OF CERTAIN DOCUMENTS

485. When the minute or the original of an authentic act or of a public register has been lost, destroyed or removed, any person holding an authentic copy of or extract from the act or register, or any interested person, can ask the court to authorize or order that it be deposited with the public officer the court designates to serve as the original.

The person pays the depositing fee and, if applicable, provides a new copy to the person who held the copy or extract deposited as well as compensation for the disbursements incurred.

486. When an authentic act or a public register cannot be replaced, the public officer who had custody of the act or register establishes and implements a procedure for reconstituting it.

If the public officer does not act in a timely manner, any interested person can ask the court to designate a person to establish a reconstitution procedure.

The court homologates the reconstituted document on being satisfied that the procedure followed was appropriate and provides a valid reconstitution.

487. The homologated reconstituted document serves as the original; it is deposited with the public officer who had custody of the original or with the transferee.

The homologation does not prevent an interested person from contesting the content of the document or asking for corrections or additions to the document.

TITLE IV

DEMANDS INVOLVING INTERNATIONAL LAW

CHAPTER I

GENERAL PROVISIONS

488. Natural or legal persons authorized by the law governing their capacity to take part in proceedings can do so before the courts of Québec. If, under that law, a person must be represented, assisted or authorized, the person must, before the courts of Québec, be represented, assisted or authorized in the manner specified by that law or by Québec law.

A natural or legal person authorized to take part in proceedings in a certain capacity under the law of a foreign state can do so before the courts of Québec.

A group of persons authorized by its constituting Act to take part in proceedings can do so before the courts of Québec.

489. When a Québec court is seized of a dispute that involves a foreign element, the defendant, if domiciled abroad, has 30 days to answer the summons and the parties have three months from the date on which the originating demand is notified to file a case protocol. These time limits can be shortened if the parties consent or if, in an urgent situation, the judge so orders.

CHAPTER II

PRELIMINARY EXCEPTIONS AND SECURITY

490. A demand urging a Québec court to decline international jurisdiction or dismiss a demand for lack of international jurisdiction is presented, as with any preliminary exception, at the case management conference.

When ruling on its international jurisdiction, the court considers the guiding principles of procedure in addition to the provisions of article 3135 of the Civil Code.

491. If a plaintiff not resident in Québec or, being a legal person, not domiciled in Québec could be ordered by the court to pay legal costs, the defendant can, at any stage of the proceeding, require that the plaintiff be ordered to give security for costs within a specified time, under pain of dismissal of the demand. A person acting for another person under the rules of representation before the courts can also be required to give security if the representative or one of his or her mandators is not resident in Québec.

In determining the amount of the security, the court considers the nature, complexity and importance of the case, including the cost involved, as well as the plaintiff's financial situation and the value of the plaintiff's property in

Québec; if the plaintiff is acting on behalf of a mandator who is not resident in Québec, the court considers the mandator's financial situation. On the demand of a party, the court can increase or reduce the amount of security if warranted by developments in the case or by the plaintiff's circumstances.

492. No security for legal costs can be ordered in family proceedings or proceedings under the Act respecting the civil aspects of international and interprovincial child abduction (R.S.Q., chapter A-23.01).

In accordance with the Act to secure the carrying out of the Entente between France and Québec respecting mutual aid in judicial matters (R.S.Q., chapter A-20.1), no French plaintiff can be ordered to give security.

CHAPTER III

INTERNATIONAL NOTIFICATION

493. International notification between states that are party to the 1965 Hague Convention on the service abroad of judicial and extrajudicial documents in civil and commercial matters is made in accordance with the Convention, which is reproduced in a schedule to this Code and has force of law in Québec.

In any other instance, notification is made in accordance with the law in effect in the place where the document must be notified.

The court, on a demand, can authorize a different mode of notification if the situation permits and it is warranted by the circumstances.

The certificate of notification is sent to the notifying party through the same channels as those used to notify the demand.

494. Requests for notification of judicial and extrajudicial documents in civil, commercial and administrative matters to natural or legal persons resident in France or Québec are forwarded as provided in the Act to secure the carrying out of the Entente between France and Québec respecting mutual aid in judicial matters.

495. If it is established that no certificate of notification has been received within three months after an originating demand was forwarded to a foreign state not party to the Convention to be notified, in that state, according to a mode recognized by the law of that state for the notification of documents originating abroad, despite reasonable efforts to secure the certificate through the competent authorities of the foreign state, the court can render judgment against the defendant.

496. The Minister of Justice, on a demand received by the Government through diplomatic or consular channels, can direct a bailiff to notify a judicial document originating in a foreign state to a person in Québec.

The document to be notified must be certified by an officer of the issuing court. If the document is not in French or English, it must be accompanied by an authenticated translation, and the certificate of notification must state that a translation is attached to the notified document.

The notifying party pays the notification costs in advance, unless otherwise provided by an international instrument to which Québec is party.

497. The Minister of Justice can refuse a request for notification if it poses a threat to the security of Canada or Québec.

CHAPTER IV

SUMMONING OF WITNESSES

498. A person resident in another province or in a territory of Canada can be summoned to appear as a witness. The evidence of the witness is taken at a distance unless it is established to the satisfaction of the court that attendance in person is necessary. An advance on the witness indemnity must accompany the subpoena.

A special order of the court must be endorsed on the subpoena, which must be notified in accordance with the law of the place of residence of the person summoned to appear.

Unless a defaulting witness resident outside Québec is in Québec at the time of the default, only a court having jurisdiction where the witness resides can punish the witness, on the basis of a certificate of default issued by the court before which the proceeding is pending.

499. The court confirms a subpoena issued by an authority in another province or in a territory of Canada if it is endorsed with a special order and accompanied by an advance on the witness indemnity.

CHAPTER V

ROGATORY COMMISSIONS

DIVISION I

ROGATORY COMMISSION ORIGINATING IN QUÉBEC

500. If the parties cannot agree on the use of technological means to examine a witness, or the use of such means is not practicable, the court, on a demand, can appoint a commissioner to take evidence or perform some other judicial act, excluding execution or conservatory measures.

If the person to be examined is domiciled or resident in a foreign state, the court can issue a rogatory commission either to a competent authority in that

state or to Canadian diplomatic or consular authorities. The court decision is notified by the court clerk to the Minister of Justice and, if required by the foreign state, is accompanied by a translation, the cost of which is borne by the party that demanded the commission.

501. A judgment appointing a commissioner sets out the names of the persons to be examined and the manner in which they are to be sworn, the necessary instructions to guide the commissioner in the execution of the commission, and the time within which the commissioner's report must be filed. The order can also fix an amount to cover the commissioner's expenses and disbursements and direct that it be deposited with the court clerk by the party that demanded the commission.

The party that demanded the commission, or alternatively, the party that joined in obtaining it, must see that it is delivered and executed promptly.

502. If a party wishes to be represented at the examination, it must advise the commissioner in a timely manner and provide the name and address of its representative. The commissioner must give the representative at least five days' notice of when and where the proceedings in execution of the commission are to take place.

503. A party can ask the court to attach examination and cross-examination questions to the commission.

Whether or not any questions have been formulated in advance, the commissioner can ask a witness any relevant question and allow any relevant question to be asked. The commissioner reserves any objections to evidence, the witness being bound to answer and the parties retaining the right to present their objections before the court.

504. Within the time specified in the judgment, the commissioner notifies to the court clerk a report on the execution of the commission together with the signed depositions of the witnesses and the exhibits they produced. The documents must be in a sealed envelope on which the contents and the case name are identified.

An unjustified failure to file a commission report cannot prevent the court from proceeding with the hearing of the case.

505. A demand for a rogatory commission in a civil, commercial or administrative matter involving natural or legal persons resident or domiciled in France or in Québec must comply with the rules set out in the Act to secure the carrying out of the Entente between France and Québec respecting mutual aid in judicial matters.

A commission for the examination of a witness on active service with the armed forces of Her Majesty outside Québec is addressed to the Judge Advocate

General and executed by the person designated by the Judge Advocate General for that purpose.

DIVISION II

ROGATORY COMMISSION ORIGINATING IN FOREIGN STATE

506. The Minister of Justice submits to the court any demand for a rogatory commission received from a foreign authority. The court can appoint a commissioner to take the evidence and perform the judicial acts requested in the rogatory commission, excluding any execution or conservatory measures.

The court, even on its own initiative, can refuse to allow the execution of the rogatory commission if the court is of the opinion that it falls outside its jurisdiction or poses a threat to the security of Canada or Québec.

The same rules apply, with the necessary modifications, to a demand originating from a commission of inquiry established by the Governor General in Council or a Lieutenant Governor in Council.

507. A rogatory commission is executed in accordance with the rules of this Code governing trials, unless the foreign authority has requested a different procedure. The foreign authority must in any event provide security for the payment of witness indemnities.

The court notifies the foreign authority of when and where the proceedings in execution of the rogatory commission are to take place.

508. The documents attesting to the execution of the rogatory commission or the court's refusal to allow its execution are sent to the foreign authority through the same channels as those used to send the demand to the Minister of Justice.

509. If there is reason to believe that a requirement within the meaning of section 1 of the Business Concerns Records Act (R.S.Q., chapter D-12) has been or is about to be issued to send outside Canada a document relating to a business concern, the Attorney General, or any person interested in the business concern, can bring a demand before the court in the judicial district where the business concern is located for an order directing any person named in the order to provide an undertaking or security to ensure that the named person will not send the document referred to in the requirement outside Canada.

In urgent cases, the demand can be filed and presented before the court without prior notice, unless the court determines otherwise.

CHAPTER VI

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDICIAL DECISIONS AND FOREIGN PUBLIC DOCUMENTS

510. A demand for the recognition and enforcement of a judicial decision rendered outside Québec is an originating demand.

Such a demand can also be presented incidentally by any party in the course of a proceeding.

511. A party seeking recognition or enforcement of a foreign judicial decision attaches the decision to the demand, together with a certificate from a competent foreign public official certifying that the decision is *res judicata* in the state in which it was rendered.

If the decision was rendered by default, certified documents establishing that the originating demand was properly notified to the defaulting party are also attached to the request.

Documents in a language other than French or English must be accompanied by a translation authenticated in Québec.

BOOK VI

SPECIAL PROCEDURAL ROUTES

TITLE I

PROVISIONAL REMEDIES AND CONTROL MEASURES

CHAPTER I

INJUNCTION

512. An injunction is an order of the Superior Court compelling a person or, in the case of a legal person, partnership or association, its officers or representatives, to refrain from or cease doing something or to perform a specified act.

A judgment granting an injunction must be served on the parties and the other persons concerned.

513. A party can demand an interlocutory injunction in the course of a proceeding or even before the filing of the originating demand if the latter cannot be filed in time.

A demand for an interlocutory injunction must be filed with the sworn statements needed to support the demanding party's claims and notified to the adverse party with a notice of the date of presentation.

In an urgent case, the court can grant a provisional injunction, even before notification. A provisional injunction cannot be granted for a period exceeding 10 days without the consent of the parties.

514. An interlocutory injunction can be granted if the demanding party appears to have a right to it and it is judged necessary to prevent serious or irreparable prejudice to that party or the creation of a factual or legal situation that would render the judgment on the merits ineffectual.

The court can suspend or renew an interlocutory injunction for the time and subject to the conditions it determines.

515. If an interlocutory injunction is granted, it must be served on the adverse party and the other persons concerned.

If the originating demand has not yet been served, it is served with the injunction; if the originating demand has not yet been filed, the injunction is served without the originating demand, but the latter must be served within the time set by the court.

516. An injunction cannot be granted to restrain judicial proceedings or the exercise of an office within a legal person established in the public interest or for a private interest, except in the cases described in article 329 of the Civil Code.

517. An injunction remains in force despite an appeal; an interlocutory injunction remains in force despite a judgment on the merits that dissolves the injunction if the plaintiff initiates an appeal against the judgment.

In either case, a judge of the Court of Appeal can provisionally suspend the injunction for a specified time.

518. When imposing a contempt sanction for violation of an injunction, the court can order the destruction or removal of anything made contrary the injunction.

CHAPTER II

SEIZURE BEFORE JUDGMENT AND SEQUESTRATION

DIVISION I

SEIZURE BEFORE JUDGMENT

519. The sole purpose of a seizure before judgment is to place property in the hands of justice for the duration of the proceeding. Such a seizure is carried out in the same manner and according to the same rules as a seizure after judgment, subject, however, to the rules of this chapter.

A seizure before judgment can be carried out before the filing of the originating demand or in the course of the proceeding, or after an appeal has been initiated, but in the latter case only with the authorization of the court of first instance.

Seized property remains in the custody of the person from whom it is seized unless the court decides otherwise.

520. A plaintiff, as of right, can seize the following before judgment:

- (1) movable property which the plaintiff has the right to claim;
- (2) movable property for whose price the plaintiff is entitled to be collocated by preference and which is being used in such a manner as to jeopardize the realization of the plaintiff's prior claim; and
- (3) movable property which, under a provision of law, the plaintiff is entitled to seize in order to secure the exercise of rights in the property.

However, the authorization of the court is necessary to seize a technological medium or a document stored on such a medium.

521. With the authorization of the court, the plaintiff can seize the defendant's property before judgment if there is reason to fear that recovery of the debt might not be possible without the seizure.

522. In a proceeding for the annulment of a marriage or a civil union, for separation from bed and board or as to property, for divorce or the dissolution of a civil union, or for payment of a compensatory allowance, each spouse, as of right, can seize before judgment movable property belonging to him or her whether it is in the hands of the other spouse or a third person. With the authorization of the court, each spouse can also seize property belonging to the other spouse in which he or she would be entitled to share on the dissolution of the matrimonial or civil union regime.

523. A seizure before judgment is carried out under a notice of seizure and according to the seizing plaintiff's instructions, supported by that person's sworn statement affirming the existence of the debt and the facts giving rise to the seizure and, if applicable, specifying the source of the information relied on. If the authorization of the court is necessary, it must appear on the seizing plaintiff's sworn statement.

In the seizing plaintiff's instructions, the officiating bailiff is directed to seize all the defendant's movable property or only certain specified movables or immovables. The bailiff notifies the notice of seizure to the defendant along with the seizing plaintiff's sworn statement.

524. If a seizure before judgment is carried out before notification of the originating demand, the seizing plaintiff must file the originating demand with

the court and notify it to the defendant within five days after the notice of seizure is notified.

525. The defendant has five days after the notice of seizure is notified to demand that the seizure be quashed on the ground that the allegations in the seizing plaintiff's sworn statement are insufficient or false. If this ground is found to be valid, the court can quash the seizure; if not, it can revise its scope.

526. The defendant can prevent the removal of property, be released from the seizure or recover seized property by giving the bailiff sufficient security. If the bailiff refuses the security offered, the defendant can ask the court for a decision.

DIVISION II

SEQUESTRATION

527. The court, even on its own initiative, can order the sequestration of disputed property if it considers it necessary to preserve the rights of the parties in the property. When ordering sequestration, the court designates the sequestrator or convenes the parties to appear before it on a specified date to choose the sequestrator.

If an appeal has been initiated, the court of first instance can order sequestration.

528. The sequestrator takes an oath before the court clerk to preserve the property as appointed depositary, and is placed in possession of the property by a bailiff who draws up minutes describing the property that are authenticated by the bailiff and the sequestrator.

529. The sequestrator is bound by all the obligations of conventional sequestration, unless the court decides otherwise.

The costs and remuneration of the sequestrator are taxed by the court clerk and are owed solidarily by the parties to the dispute, unless the court decides otherwise.

CHAPTER III

HOMOLOGATION

530. Homologation is approval by a court of a juridical act in the nature of a decision or of an agreement. It gives the homologated act the same force and effect as a judgment of the court.

The homologating court verifies only the legality of the act and cannot decide its advisability or merits unless a specific provision empowers it to do so.

A demand for homologation is presented before the court on the date specified in the attached notice of presentation. The presentation date cannot be less than five days after notification of the demand.

CHAPTER IV

JUDICIAL REVIEW

DIVISION I

GENERAL RULES

531. In a judicial review, the Superior Court can, depending on the subject matter,

(1) declare inapplicable, invalid or inoperative a provision of a law of the Parliament of Québec or the Parliament of Canada, a regulation or by-law made under such a law, an order in council, a minister's order or any other rule of law;

(2) evoke, on the application of a party, a case pending before a court or tribunal other than the Court of Appeal, or review or quash a judgment rendered by such a court or tribunal or a decision made by a person or body answerable to the Parliament of Québec, if the court, tribunal, body or person acted without jurisdiction or in excess of jurisdiction, or if the procedure followed was affected by some gross irregularity;

(3) direct a person holding an office within a public body, within a legal person or within an association within the meaning of the Civil Code to perform an act which by law he or she is required to perform, provided the act is not of a purely private nature; or

(4) dismiss a person who, without right, is occupying or exercising a public office or an office within a public body, within a legal person or within an association within the meaning of the Civil Code.

532. Except in cases of lack or excess of jurisdiction, judicial review is available only if the judgments of the court or tribunal or the decisions of the public body cannot be appealed or contested.

An application for judicial review must be served within a reasonable time after the act or the fact giving rise to it.

533. An application for judicial review is presented before the court on the date specified in the attached notice of presentation. The presentation date cannot be less than 15 days after service of the application. The judicial review is conducted by preference.

Unless the court decides otherwise, an application for judicial review does not stay proceedings pending before the other court or tribunal or the execution

of the judgment or decision under review. If necessary, the court orders that the exhibits it specifies be sent without delay to the court clerk.

A review judgment that rules in favour of the demanding party is served on the parties if it orders that an act be performed or refrained from.

534. At any time after a notice of appeal has been filed, an appellate judge can order a stay of any proceeding whose execution is not stayed by the appeal.

DIVISION II

SPECIAL RULES APPLICABLE TO USURPATION OF OFFICE

535. On removing the defendant from office, the court, on request, can confer the office on a person who has a right to the office if the facts proving such right are set out in the demand for judicial review. The review judgment can impose punitive damages on the defendant.

536. If the review judgment is based on the ground that the defendant may have committed a criminal offence, it is effective immediately despite an appeal. Nevertheless, the office is only deemed to be vacant as of the day on which the judgment becomes final, unless it is vacated at an earlier time for another reason; in the meantime, the defendant is not entitled to the benefits attached to the office.

In the case of an office held by a member of the council of a municipality that is subject to Title I of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2), the effects of provisional execution of the judgment are specified by that Act.

537. The person on whom the court confers the office can exercise it after taking the required oath and giving the required security, and can demand that the defendant hand over the property incidental to the office. If the defendant refuses, the court can direct a bailiff to take possession of the property and hand it over to the rightful person.

538. The election of a warden in accordance with section 210.29.2 of the Act respecting municipal territorial organization (R.S.Q., chapter O-9) or of a mayor or a municipal councillor cannot be contested under this chapter, except for lack of qualification.

TITLE II

RECOVERY OF SMALL CLAIMS

CHAPTER I

GENERAL PROVISIONS

539. A demand for recovery of a claim not exceeding \$15,000, excluding interest, is instituted under the rules of this Title if the plaintiff is acting in his or her own name and for his or her own account or is acting as administrator of the property of others, tutor or curator or under a protection mandate. The same applies to a demand seeking the resolution, resiliation or cancellation of a contract if neither the value of the contract, nor the amount claimed, if any, exceeds \$15,000.

A legal person, a partnership or an association cannot act as plaintiff under this Title unless, during the 12-month period preceding the demand, not more than five persons bound to it by an employment contract were under its direction or control.

540. This Title does not apply to claims arising from the lease of a dwelling, demands for support, defamation proceedings or class actions.

Nor does it apply to demands brought by persons, partnerships or associations on the basis of a claim assigned to them in return for payment. However, a debtor who would qualify to act as plaintiff under this Title can ask that the case be referred for processing under this Title.

541. A plaintiff can reduce the demand voluntarily to an amount not exceeding \$15,000, but cannot divide a claim exceeding that amount into two or more claims of a lesser amount, under pain of dismissal of the demand.

However, a plaintiff is not deemed to have divided a claim if it arises from a credit contract providing for repayment by instalments or from a contract involving the sequential performance of obligations, such as a lease, an employment contract, a disability insurance contract or other similar contract, provided the demand does not exceed \$15,000.

542. Two or more creditors can join in the same demand if their claims have the same juridical basis or raise the same points of law and fact, provided each of the claims does not exceed \$15,000. The court can separate the demands at any time.

543. At any time in the course of the proceeding, the court, even on its own initiative, can take the case management measures it considers appropriate and, if necessary, convene a case management conference or hear a preliminary demand and issue any appropriate order.

If the court considers it necessary in order to assess facts relating to the dispute, it can order the parties to seek a joint expert opinion, specifying the applicable terms; it can also ask a bailiff to verify the state of certain premises or things.

544. When the operability, constitutionality or validity of a provision of a law or regulation is challenged in court, the court can order that the demand be referred to the competent court or be tried under the rules of Book II.

CHAPTER II

REPRESENTATION OF PARTIES

545. Natural persons must self-represent; they can, however, give their spouse, a relative, a person connected to them by marriage or civil union or a friend a non-remunerated mandate to represent them. The mandate must be set out in a document identifying the mandatary and signed by the mandator.

The State, legal persons, partnerships and associations can only be represented by an officer or employee exclusively in their service.

Despite the Charter of human rights and freedoms, lawyers or collection agents cannot act as a mandatary except to recover fees owed to the partnership of which they are a member. By way of exception, if a case raises a complex legal issue, the court, on its own initiative or on a party's request, after obtaining the consent of the chief judge of the Court of Québec, can authorize the parties to be represented by lawyers. In such a case, except for parties not eligible as plaintiffs under this Title, the fees and costs of lawyers are borne by the Minister of Justice and cannot exceed those set in the tariff of fees established by the Government under the Legal Aid Act (R.S.Q., chapter A-14).

Both natural persons and legal persons can consult a lawyer, including for the purpose of preparing the presentation of their case.

CHAPTER III

PROCEDURE

DIVISION I

INSTITUTION OF DEMAND, AND DEFENCE

546. The parties can inquire with the court office for information on the conduct of the proceeding and the execution of the judgment and, more specifically, on key procedural steps and the rules governing the disclosure of exhibits and the production of evidence. If necessary, the court clerk assists the parties in preparing pleadings or completing the forms placed at their disposal, but cannot give them legal advice.

547. The demand must set out the facts on which the claim is based, the nature of the claim, the amount of the claim and interest and the conclusions sought, and must list the supporting exhibits. It must also state the plaintiff's name and domicile or residence and, if applicable, those of the plaintiff's mandatary, as well as the defendant's name and last known place of residence. The demand must also specify whether the plaintiff might consider settling the matter out of court or taking part in a mediation process.

If the plaintiff is a legal person, a partnership or an association, the demand must contain a declaration that not more than five persons bound to it by an employment contract were under its direction or control at any time during the 12-month period preceding the demand.

548. If the demand is admissible, it is filed with the court along with the exhibits, which opens the court record. If the demand is not admissible, the court clerk notifies a notice so informing the plaintiff and specifying that the decision can be reviewed by the court if the plaintiff so requests within 15 days after the notification.

The demand is filed with the exhibits and a list of the exhibits. In all instances, originals not filed with the demand can be produced on the day of the hearing.

If a demand is filed with the court of the plaintiff's domicile or residence or of the place where the plaintiff has an establishment, the court clerk can forward it to the court having territorial jurisdiction.

549. The court clerk notifies the demand to the defendant together with a notice setting out the options available to the defendant and the list of exhibits or, if available, scanned images of the exhibits.

The notice must be in the form determined by the Minister of Justice and state that if the defendant fails to indicate the option chosen to the court clerk within 20 days after the notification, judgment can be rendered against the defendant without further notice or extension.

550. The options available to the defendant are the following:

(1) to pay the amount claimed to the court, or to pay the amount directly to the plaintiff and send the proof of payment or acquittance obtained from the plaintiff to the court;

(2) to reach a settlement with the plaintiff and send a document containing the settlement agreement to the court; or

(3) to defend on the merits and so inform the court, specifying the grounds for the defence.

In addition, a defendant who chooses to defend on the merits can

(1) request that the dispute be referred to mediation or that a settlement conference be convened;

(2) request that the demand be dismissed, that the case be referred to another judicial district or to the competent court or administrative tribunal, or that the case be tried by the same court but under the rules of Book II, specifying the grounds for the request;

(3) request the forced intervention of a third person as a co-defendant or an impleaded party, in order to assert a demand in warranty against that person or allow the full resolution of the dispute, in which case the defendant informs the court clerk of the person's name and last known address;

(4) make a cross-demand against the plaintiff to assert a claim arising from the same source as the principal demand or from a related source, provided the amount of the cross-demand would make it admissible under this Title; or

(5) make a tender and deposit the amount tendered with the court or with a trust company.

551. If the defendant pays the plaintiff, the court clerk closes the record; if the parties reach a settlement and one of the parties so requests, the court clerk confirms the settlement agreement as a judgment.

If the defendant requests referral of the case, the court clerk so informs the plaintiff, specifying that the plaintiff has 10 days after being so informed to make representations in writing. On the expiry of that time, the court clerk submits the request and any representations to the court. If the request is found by the court to be well-founded, the court clerk sends the record to the court having jurisdiction.

552. If the defendant chooses to defend on the merits, the grounds for the defence and the supporting exhibits must be filed with the court. The court clerk notifies the defence to the plaintiff along with a list of the supporting exhibits. If no defence grounds are filed, the court clerk directs the defendant to file such grounds within 10 days, specifying that failure to do so will result in the defendant being considered in default for failure to defend.

553. The defendant, regardless of the number of employees in the defendant's employ, can make a cross-demand to assert a claim against the defendant arising from the same source as the principal demand or from a related source, provided the amount claimed does not exceed \$15,000, or to request the resolution, resiliation or annulment of the contract on which the demand is founded. Supporting exhibits must be filed with the court by the defendant. If the cross-demand is not admissible as a small claim, the court clerk notifies a notice so informing the defendant and specifying that the decision can be reviewed by the court if the defendant so requests within 15 days after the notification.

554. If the defendant requests the intervention of another person, the grounds for the intervention and the supporting exhibits must be filed with the court. The court clerk so informs the plaintiff and serves the originating demand and the defence on the intervenor, specifying that the intervenor's attendance is required on the defendant's request. The court clerk also informs the intervenor, as if the latter were a defendant, of the options available and the applicable time limits.

555. If the defendant is in default for failure to defend, the special clerk renders judgment on the face of the demand and the exhibits filed in the record or, if he or she considers it necessary, after hearing the plaintiff's evidence.

556. A defendant being sued under Book II can request that the case be heard under this Title if the defendant would qualify as a plaintiff under this Title.

The request is presented to the clerk of the court seized of the matter, at any time before the case is set down for trial and judgment. If the request is found to be admissible, the court clerk notifies the decision to the plaintiff and the latter can, within 15 days after the notification, request a review of the decision by the court seized of the matter. The court clerk, at the same time, gives the defendant notice to file a defence and the supporting exhibits. In the absence of a review, the court clerk transfers the record so that the case may be continued under this Title.

DIVISION II

SUMMONING OF PARTIES AND WITNESSES

557. Once the case is ready, at least one month but at the most three months before the scheduled hearing date, the court clerk notifies a summons to the hearing to the plaintiff and to the other parties that have filed a defence.

The summons mentions that a party can, on request, examine and obtain a copy of the exhibits and the documents filed with the court by the other parties. It also informs the parties that any other documents not yet filed must be filed at least 30 days before the scheduled hearing date, and that any person mandated to represent the plaintiff must file the mandate with the court.

The summons reminds the parties that they must bring their witnesses to the hearing, but that a witness's attendance at court can be replaced by written testimony, and that they have 15 days after receipt of the summons to give the court clerk the names of any witnesses they wish to have summoned or to file the statements of any witnesses who will not be attending at court. The summons further reminds the parties that, if the judge considers that a witness was needlessly summoned and required to attend at court, they can be made to bear the related legal costs.

The court clerk summons the witnesses requested by the parties. If the number of witnesses appears to the court clerk to be needlessly high, he or she can request instructions from the court.

DIVISION III

MEDIATION

558. The court clerk informs the parties at the earliest opportunity that they can at no additional cost submit the dispute to mediation. If the parties consent, they can request the court clerk to refer them to the mediation service. In that case, the mediation session is presided over by a lawyer or a notary, certified as a mediator by his or her professional order.

The mediator files a report with the court giving an account of the facts, the positions of the parties and the points of law raised.

If the parties reach a settlement, they file with the court either a notice that the case has been settled or the signed settlement agreement. A settlement agreement confirmed by the court is equivalent to a judgment.

DIVISION IV

HEARING

559. In all cases where a hearing is necessary, the court clerk, if reasonably practicable, sets a date and time for the hearing that will allow the parties and their witnesses to attend. The court can hold the hearing elsewhere than at the place where the demand was filed.

The court clerk can postpone a case on a party's request if it is the first request of the kind and is made at least one month before the scheduled hearing date. The court clerk informs the other party without delay of the request and hears the other party's representations. If the court clerk grants the request, he or she rules on the costs incurred by the latter party, which decision can be revised by the court at the hearing on the merits. Any further request for a postponement must be submitted to the court for decision.

560. If a demand that is before the Superior Court or the Court of Québec pursuant to Book II has the same juridical basis or raises the same points of law as a demand instituted under this Title, the court can suspend the hearing on a party's request, provided no serious prejudice can be caused to the adverse party.

The suspension is maintained until the judgment on the other demand has become final, although the court can revise the decision to suspend if warranted by new circumstances.

561. If, at the time set for the hearing, a party or the parties are absent, the court can either postpone the hearing or render a judgment on the basis of the evidence offered.

562. At the hearing, the court instructs the parties summarily as to the applicable rules of evidence and the procedure it considers appropriate. At the invitation of the court, the parties state their allegations and call their witnesses. The court examines the parties and the witnesses and provides fair and impartial assistance to each of them so as to bring out the substantive law and ensure that it is carried out.

The defendant or an intervenor can raise any ground of defence and, if appropriate, propose terms of payment.

The court can accept the production of any document, even though the prescribed filing time has expired.

At the end of the hearing, the court identifies the witnesses to whom compensation is payable under the tariffs in force.

563. The court attempts to reconcile the parties if circumstances permit.

If the parties reach a settlement, the court clerk draws up minutes in which the settlement agreement is recorded. Once signed by the parties and confirmed by the court, the settlement agreement is equivalent to a judgment. If no settlement is reached, the court continues to hear the matter.

564. If, within 15 days after notification of the summons, a party files a deponent's statement with the court as factual or expert evidence, the court clerk notifies the statement to the other party. If it considers it necessary, the other party can request the court clerk to summon the deponent.

DIVISION V

JUDGMENT

565. As soon as the judgment has been signed, the court clerk notifies a certified copy to each party; a notice is also notified to the debtor stating that since the judgment has been rendered against that person, failure to settle the outstanding claim within the time limits prescribed by this Code can result in the person's property, including income and investments, being seized and, if applicable, sold by judicial sale.

566. The judgment cannot be appealed.

No judgment or proceeding relating to a small claim is open to judicial review except on the ground of lack or excess of jurisdiction.

567. The court can order the execution of a judgment within a time limit other than those prescribed by Book VIII and, for instance, authorize earlier execution of the judgment if the creditor establishes, in a sworn statement, a fact that would justify a seizure before judgment.

The court can also authorize the debtor to settle the outstanding claim by means of instalments to be paid to the creditor in accordance with specified terms. The debtor loses the benefit of the term on defaulting on an instalment and failing to remedy the default within 10 days.

568. The court clerk can assist in the execution of a judgment if the creditor is a natural person.

If incidental demands are filed in relation to execution of a judgment, the court clerk informs the other parties without delay and, if applicable, the bailiff, and summons the parties to a hearing on a specified date.

If the value of the property that is subject to an execution proceeding exceeds \$15,000, the court can order that the matter be transferred to the court that is competent to deal with claims in that amount, for continuation of the execution proceeding.

569. The judgment execution costs that can be claimed from the debtor are set out in the tariffs applicable under this Title.

570. A party against which a default judgment has been rendered who was unable to defend on the merits in a timely manner or attend the hearing owing to fraud, surprise or any other cause considered sufficient can apply for the revocation of the judgment. A party can also demand a revocation in any other circumstances that can give rise to a revocation under Book IV.

The application for revocation must set out the grounds justifying the revocation and be filed with the court within 30 days after the party becomes aware of the judgment, provided not more than six months have elapsed since the date of the judgment. If the grounds appear sufficient, the court can suspend measures to force execution of the judgment. The court clerk then summons the parties so that they can be heard on the application for revocation and, if warranted, on the merits of the dispute.

CHAPTER IV

MISCELLANEOUS PROVISIONS

571. Pleadings cannot be accepted by the court clerk unless the filing fee prescribed under the applicable tariff of court costs and fees is paid. However, a person who provides proof of being a recipient under a social assistance or social solidarity program established under the Individual and Family Assistance Act is exempted from payment of the filing fee.

If a pleading is refused, the amount paid to the court is refunded.

572. The Government can make regulations establishing

(1) a tariff of court costs and fees for the filing or presentation of demands and pleadings under this Title and for the execution of judgments, as well as a tariff of bailiff's fees payable by the debtor;

(2) a tariff of fees payable to certified mediators by the mediation service, and the maximum number of sessions for which a mediator can be paid fees in relation to the same demand; and

(3) the special rules and obligations with which certified mediators must comply in the exercise of their functions, as well as the penalties applicable for non-compliance.

TITLE III

SPECIAL RULES FOR CLASS ACTIONS

CHAPTER I

INTRODUCTORY PROVISIONS

573. A class action is a procedural means enabling one member of a class of persons ("representative plaintiff") to act as plaintiff, without a mandate, on behalf of all the members of the class.

In addition to natural persons, a legal person established for a private interest, a partnership or an association can be a member of a class. It can itself request status as representative plaintiff if the director, partner or member it designates is a member of the class on behalf of which it is seeking to institute a class action, and the designee's interest is related to the objects for which it was constituted.

574. As soon as a demand for authorization to institute a class action is filed, the chief justice, unless he or she decides otherwise, assigns a judge as special case manager and to hear all procedural matters relating to the class action. The chief justice can assign a judge despite there being grounds for the judge's recusation provided the chief justice considers the situation does not give cause to call the judge's impartiality into question.

After considering the interests of the parties and the class members, the chief justice can determine the district in which the class action is to proceed.

575. A central registry of class actions is kept at the Superior Court under the authority of the chief justice. Demands for authorization to institute a class action and the ensuing class actions, as well as any other documents specified in the chief justice's instructions, are entered in the registry.

CHAPTER II

AUTHORIZATION TO INSTITUTE CLASS ACTION

576. Prior authorization of the court is required for a class member to institute a class action.

The demand for authorization must state the facts on which it is based and the nature of the class action, and describe the class on whose behalf the class member intends to act. It is served on the person against whom the class member intends to bring the class action, with at least 30 days' notice of the presentation date.

A demand for authorization can only be contested orally, and the court can allow relevant evidence to be submitted.

If the subject matter of the class action is the same as or similar to the subject matter of a multi-jurisdictional class action that includes class members in Québec, the demand for authorization and notice must be notified, if the court considers it necessary, to the representative plaintiff in the multi-jurisdictional class action.

577. The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that

- (1) the claims of the members of the class raise identical, similar or related issues of law or fact;
- (2) the facts alleged appear to justify the conclusions sought;
- (3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for joinder of demands; and
- (4) the class member the court has decided to appoint as representative plaintiff is in a position to adequately represent the class members.

578. The judgment authorizing a class action describes the class whose members will be bound by the class action judgment, appoints the representative plaintiff and identifies the common issues to be dealt with and the conclusions sought. It describes any subclasses created, as for class members who are resident outside Québec, and determines the district in which the class action is to be instituted.

The authorization judgment orders the publication of a notice to class members or, if all the class members are known, the notification of the notice to them; if circumstances permit, it can also require the setting up of a website to keep class members informed about the proceeding.

The authorization judgment also determines the date after which a class member can no longer opt out of the class. The time for opting out cannot be shorter than 30 days or longer than six months after the date of the notice to class members. This time limit is a strict time limit, although a class member, with leave of the court, can opt out after its expiry after proving that it was actually impossible for the class member to act sooner.

579. The court cannot refuse to authorize a class action on the sole ground that the class members are party to a multi-jurisdictional class action already underway outside Québec.

However, if the court is convinced that another court is in a better position to decide the issues raised and that the rights and interests of the class members resident in Québec are being properly taken into account, it can suspend the examination of the demand for authorization, the time limit for filing the originating demand or the conduct of the class action until a judgment is rendered by that other court or a transaction is made or a settlement is reached.

If a multi-jurisdictional class action has been instituted outside Québec, the court, in order to protect the interests of the class members resident in Québec, can disallow the discontinuance of a demand for authorization, or authorize another plaintiff or representative plaintiff to institute a class action involving the same subject matter and the same group if it is convinced that the class members' interest would thus be better served.

580. A judgment authorizing a class action cannot be appealed. A judgment denying authorization can be appealed as of right by the person who filed the demand for authorization or, with leave of the Court of Appeal, by a member of the class on whose behalf the demand for authorization was filed.

The appeal is heard and decided by preference.

CHAPTER III

NOTICES

581. When a class action is authorized, a notice is published or notified to the class members

- (1) describing the class and any subclass;
- (2) setting out the principal common issues to be dealt with and the conclusions sought;
- (3) stating the representative plaintiff's name, contact information for the representative plaintiff's lawyer and the district in which the class action is to proceed;

(4) stating that class members have the right to intervene in the class action;

(5) stating that class members have the right to opt out of the class action and specifying the procedure and time limit for doing so;

(6) stating that no class member other than the representative plaintiff or an intervenor can be required to pay legal costs arising from class action; and

(7) providing any additional information the court considers appropriate, including the address of the website for the central registry of class actions.

582. A member of a class or subclass who wishes to opt out of a class action must so inform the court clerk before the time for doing so has expired. A person who has opted out is not bound by any judgment on the representative plaintiff's demand.

A class member who does not discontinue an originating demand having the same subject matter as the class action before the time for opting out has expired is deemed to have opted out of the class action.

583. At any stage of a class action, the court can order a notice to be published or notified to the class members if it considers it necessary for the preservation of their rights. The notice, which must describe the class and give the names of the parties, contact information for their lawyers and the name of the representative plaintiff, must be clear and concise.

The court determines the date, form and mode of publication of the notice, having regard to the nature of the class action, the composition of the class and the geographical location of its members. The notice must, by name or a description, identify any class members who are to be given notice individually. If the court considers it appropriate, it can authorize the publication of a summary notice.

584. If the Cities and Towns Act (R.S.Q., chapter C-19), the Municipal Code of Québec (R.S.Q., chapter C-27.1) or a municipal charter requires the sending of a notice of claim as a prior condition to the institution of a class action, the notice given by one class member is valid for all class members, and insufficiency of the notice cannot be urged against the representative plaintiff.

CHAPTER IV

CONDUCT OF CLASS ACTION

585. The originating demand in a class action must be filed with the court not later than three months after the class action is authorized, under pain of the authorization being declared lapsed.

If a demand for a declaration of lapse is filed, the representative plaintiff, or another class member asking to be substituted as representative plaintiff, can prevent the authorization from being declared lapsed by filing an originating demand with the court.

586. The defendant cannot urge a preliminary exception against the representative plaintiff unless it concerns a substantial number of the class members and pertains to a common issue to be dealt with in the class action. Nor can the defendant request a splitting of the proceeding or file a cross-demand.

587. The representative plaintiff must have the authorization of the court to amend a pleading, to discontinue the demand, to withdraw a pleading or to waive rights arising from a judgment. The court can impose any conditions it considers necessary to protect the rights of the class members.

An admission by the representative plaintiff binds the class members unless the court considers that the admission causes them prejudice.

588. A class member cannot intervene voluntarily for the plaintiffs except to assist the representative plaintiff or to support the representative plaintiff's demand or claims. The court authorizes an intervention if it is satisfied the intervention is helpful to the class. The court can limit an intervenor's right to file a pleading or participate in the trial.

589. A party cannot submit a class member other than the representative plaintiff or an intervenor to a pre-trial examination or to a medical examination, nor can a party examine a witness outside the presence of the court. The court can make exceptions to these rules if it considers that doing so would be helpful for its determination of the common issues of law or fact.

590. The court can at any time, on a party's request, revise or annul the authorization judgment if it considers that conditions relating to the issues of law or fact or to the composition of the class are no longer satisfied.

If the court revises the authorization judgment, it can allow the representative plaintiff to amend the conclusions sought. If circumstances so require, the court can also, at any time, even on its own initiative, modify or divide the class.

If the court annuls the authorization judgment, the proceeding continues between the parties before the competent court pursuant to the rules of Book II.

591. The representative plaintiff is deemed to retain sufficient interest to act even if his or her personal claim is extinguished. The representative plaintiff cannot waive status as such without the authorization of the court. Such authorization cannot be given unless the court is able to appoint another class member as representative plaintiff.

If the representative plaintiff is no longer in a position to adequately represent the class members or if his or her personal claim is extinguished, another class member can ask the court to be substituted as representative plaintiff or propose some other class member for that purpose.

A substitute representative plaintiff continues the proceeding from the stage it has reached but, with the authorization of the court, can refuse to ratify acts already done if they have caused irreparable prejudice to the class members. A substitute representative plaintiff is not liable for legal costs and other expenses in relation to acts done prior to the substitution that he or she has not ratified, unless the court orders otherwise.

592. A transaction, acceptance of a tender, or an acquiescence is valid only if approved by the court. Such approval cannot be given unless notice has been given to the class members.

In the case of a transaction, the notice must state that the transaction will be submitted to the court for homologation on the date and at the place indicated. It must specify the nature of the transaction, the mode of execution chosen and the procedure to be followed by class members to prove their claim. The notice must also state that class members have the right to make submissions to the court as regards the proposed transaction and the distribution of any remaining balance. The judgment homologating the transaction determines, if necessary, the terms of its execution.

CHAPTER V

JUDGMENT AND EXECUTION MEASURES

DIVISION I

EFFECTS AND PUBLICATION OF JUDGMENT

593. The judgment on a class action describes the class to which it applies, and is binding on all class members who have not opted out.

Once the judgment has become final, the court of first instance orders the publication of a notice stating the substance of the judgment and its notification to each known class member.

594. If the judgment awards damages or a monetary reimbursement, it specifies whether members' claims are to be recovered as shares of an aggregate award or as individual claims.

595. The court can award the representative plaintiff an indemnity for expenses and disbursements and an amount to cover legal costs and his or her lawyer's fee. Both are payable out of the aggregate award or before payment of individual claims.

In the interest of the class members, the court verifies whether the fee charged by the representative plaintiff's lawyer is reasonable; if the fee is not reasonable, the court can determine it.

If the Class Action Assistance Fund provided assistance to the representative plaintiff, the court hears the Fund before ruling on the legal costs and the fee. The court disregards whether or not the Fund guaranteed payment of all or any portion of the legal costs or the fee.

596. If a demand for the homologation of a transaction or the recognition of a judgment in a foreign class action is presented to the court, the court makes sure that the rules of the Civil Code that apply to the recognition and enforcement of foreign decisions have been complied with and that the notices given in Québec in connection with the class action were sufficient.

The court must also make sure that the terms governing how Québec residents are to exercise their rights meet the requirements imposed in class actions brought before a Québec court, that Québec residents can exercise their rights in Québec in accordance with the rules applicable in Québec and that, in the case of an aggregate award, the remittance of any undistributed part of the award to a third person will be decided by a Québec court insofar as the Québec residents' share of the award is concerned.

DIVISION II

AGGREGATE AWARD

597. The court makes an aggregate award for all class members if the evidence allows a sufficiently precise determination of the total claim amount. The amount of the aggregate award is determined without regard to the identity of individual class members or the exact amount of their respective claims.

After determining the amount of the aggregate award, the court can order that the award be deposited in its entirety, or according to the terms it specifies, in a financial institution carrying on business in Québec; the interest on the amount deposited accrues to the class members. The court can reduce the amount of the aggregate award if it orders an additional form of redress, or can order redress appropriate to the circumstances instead of a monetary award.

If execution measures prove necessary, instructions are given to the bailiff by the representative plaintiff.

598. If the court makes an aggregate award, it provides for individual liquidation of the class members' claims or for distribution of a share to each class member. If, in the court's opinion, such liquidation or distribution is inappropriate or too costly, the court can order that an amount be remitted to a third person it designates.

Before deciding to remit an amount to a third person, the court hears the parties' representations, the Class Action Assistance Fund and any other person whom the court considers has a relevant opinion.

599. If the judgment provides for individual liquidation of the class members' claims or for distribution of a share to each class member, the court designates a person to carry out the operation, gives the person the necessary instructions, including instructions as to proof and procedure, and determines the person's remuneration.

The court disposes of any undistributed amount in the same manner as when it remits an amount to a third person, unless the judgment is against the State, in which case the undistributed amount is paid into the Consolidated Revenue Fund.

600. The liquidation, distribution or remittance of an amount recovered under an aggregate award is effected after payment, in the following order, of

(1) the legal costs, including the cost of notices and the remuneration of a third person designated to carry out the liquidation or distribution;

(2) the fee of the representative plaintiff's lawyer, to the extent determined by the court; and

(3) the representative plaintiff's expenses and disbursements, to the extent determined by the court.

DIVISION III

INDIVIDUAL CLAIMS

601. A judgment ordering the recovery of individual claims specifies what issues remain to be decided in order to determine individual claims, and sets out the content of the judgment notice to the class members, which must include explanations as to those issues and as to the information and documents to be filed in support of an individual claim. The court also determines any other information to be included in the judgment notice.

Within one year after the publication of the notice, class members must file their claim at the office of the court in the district where the class action was heard or in any other district the court specifies.

602. The court determines the class members' claims or orders the court clerk to determine them according to the procedure it establishes. The court can establish special modes of proof and procedure for such purpose.

603. At the hearing on an individual claim, the defendant can urge against a claimant a preliminary exception that this Title did not permit against the representative plaintiff.

DIVISION IV

APPEAL

604. The judgment disposing of a class action can be appealed as of right.

If the representative plaintiff does not initiate an appeal or if the appeal is dismissed on the grounds that it was not properly initiated, a class member can, within two months after the publication or notification of the judgment notice, ask the Court of Appeal for leave to be substituted as representative plaintiff in order to appeal the judgment.

The time limit in this article is a strict time limit.

605. The appellant asks the court of first instance to determine the content of the notice to be given to the class members.

606. If the Court of Appeal grants the representative plaintiff's demand, even in part, it can order the matter referred back to the court of first instance for execution of the aggregate award or for determination of individual claims.

BOOK VII

PRIVATE MODES OF DISPUTE PREVENTION AND RESOLUTION

TITLE I

INTRODUCTORY PROVISIONS

607. Parties that agree to negotiate must take care to properly define the issues in dispute and identify their respective needs and interests, and must come to an agreement on the information to be exchanged by them so they can prevent or resolve the dispute. They must also undertake to present a proposal for a solution and to verify whether it is compatible with the needs and interests of the other party.

608. Third persons, including mediators and arbitrators, who intervene to assist parties in preventing or resolving a dispute or to decide a dispute cannot be prosecuted for acts performed in the exercise of their functions, unless they acted in bad faith or committed a gross or intentional fault.

609. A mediator, an arbitrator or another third person who assists parties to a dispute can 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 their duty of confidentiality, provided no nominative information is disclosed.

TITLE II

MEDIATION

CHAPTER I

ROLES AND DUTIES OF PARTIES AND MEDIATOR

610. A mediator is designated 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. On the parties' request, the mediator, together with the parties, can develop a proposal for preventing or resolving the dispute.

The mediator must disclose any conflict of interest or any situation that may be seen to create a conflict of interest or give rise to doubts about his or her impartiality.

611. The mediator or mediation participants cannot be compelled to disclose in arbitration, administrative or judicial proceedings, whether or not they are related to the dispute, anything they heard or learned of during the mediation process. Nor can the mediator or mediation participants be compelled to produce a document prepared or obtained during the mediation process, unless the law requires its disclosure or there is a threat to human life, safety or personal integrity. The mediator can produce such a document, however, to defend against a claim of misconduct. No information given or statement made during the mediation process can be admitted in evidence in arbitration, administrative or judicial proceedings, whether or not they are related to the dispute.

To invoke non-compellability, the mediator must have received training from a body recognized by the Minister of Justice. In addition, the mediator must be governed by rules of professional conduct and be obliged to take out civil liability insurance or provide some other form of security to cover injury to third parties.

612. Despite the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), no one has a right of access to a document contained in the mediation record, and no one can object to the use of a document during a mediation on the ground that it may contain nominative information.

613. Participation in a mediation does not entail a waiver of the right to act before the courts. However, the parties can undertake not to exercise this right

in connection with the dispute during the mediation process, unless it is necessary for the preservation of their rights. They can also agree to waive prescription already acquired or to waive the benefit of time elapsed for prescription purposes.

If mediation takes place after legal action has been brought, the parties must agree to suspend the proceeding, if possible and if the law or the court seized of the action permits it, until the mediation is ended.

CHAPTER II

CONDUCT OF MEDIATION

614. A mediation commences, without formalities, on the day on which the parties agree to engage in the mediation process by mutual agreement or at the initiative of one of them. In the latter case, failure by another party to respond constitutes a refusal to participate in the mediation process.

615. Before entering into mediation, the parties specify their undertakings and expectations; the mediator informs the parties of the role and duties of a mediator, and defines with them the rules applicable to the mediation and the length of the mediation process.

The parties must undertake to attend all meetings to which they are called by the mediator. They can, if all consent, even tacitly, bring persons whose contribution may be helpful in resolving the dispute. The parties must ensure that the persons who have authority to transact are present, or that they can be reached at all times to give their consent.

616. The mediator has a duty to treat the parties fairly. The mediator must see that each party has an opportunity to argue its case, and must not tolerate any intimidation or manipulation by a party.

If the mediator finds that a serious inequality exists between the parties, he or she declares it and, with the parties, determines measures to reduce or minimize the effects of the inequality. If the mediator considers that a proposed agreement is likely to lead to a dispute in the future or cause serious prejudice to one of the parties, he or she invites the parties to remedy the situation and, if necessary, to seek advice from a third person.

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

617. The mediator can communicate with each party separately, but in that case must so inform the parties.

The mediator cannot disclose to a party any information relevant to the mediation that he or she receives from the other party without that party's consent.

CHAPTER III

END OF MEDIATION

618. A settlement agreement, which must contain specific undertakings by the parties, puts an end to the dispute. The agreement constitutes a transaction only if the subject matter and the circumstances permit and the wishes of the parties in that respect are clear.

The mediator makes sure that the terms and consequences of the agreement are understood by the parties and correspond to their wishes.

619. A party can decide to withdraw from or end the mediation at any time according to the party's own judgment, and can do so without giving any justification.

The mediator can end the mediation if he or she is convinced that it is doomed to failure or is likely, if continued, to cause serious prejudice to one of the parties.

620. As soon as the mediation ends, the mediator renders an account to the parties of the sums received and determines the costs of the mediation, which are borne equally by the parties, unless a different apportionment has been agreed or, if the mediation took place while a case was pending, has been ordered by the court.

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

CHAPTER IV

SPECIAL PROVISIONS APPLICABLE TO FAMILY MEDIATION

621. Mediation of a family dispute that is entered into on a purely private basis or without a judicial demand being brought must be conducted by a mediator certified in accordance with the regulations under article 624. If applicable, the mediator must inform the parties that they may participate in a parent and mediation information session as provided for in article 414.

If required by the circumstances and with the consent of the parties, the mediator can use any appropriate, readily available technological means.

622. Mediation sessions are held in the presence of both parties and a mediator or, if the parties agree, two mediators. The sessions can also be held, if all agree, in the presence of a single party or a child, or in the presence of other persons who are neither experts nor advisers if their contribution may be helpful in resolving the dispute.

As soon as the mediation ends, the mediator files a dated and signed report with the Family Mediation Service, and delivers a copy to the parties. The report records the presence of the parties and the points, if any, on which an agreement was reached. It contains no other information.

623. If the mediator considers that a proposed agreement is likely to lead to a dispute in the future or cause prejudice to one of the parties or to the children, the mediator must invite the parties to remedy the situation and, if necessary, to seek advice from a third person. The mediator may end the mediation if he or she is convinced that the possibility of prejudice cannot be eliminated.

In family matters, an agreement cannot be considered a transaction.

624. The Government designates the persons, bodies or associations that can certify a mediator in family matters, and makes regulations determining the standards with which they must comply.

The Government can make regulations defining the conditions a mediator must satisfy to be certified and determining the standards with which certified mediators must comply in the exercise of their functions, as well as the penalties applicable for non-compliance.

The Government can also make regulations determining what services are payable by the Family Mediation Service, setting the tariff of fees that the Service can pay to a certified mediator and determining the time limit and procedure for claiming such a fee and the applicable terms of payment. In addition, it can determine the tariff of fees the parties can be charged for services beyond those paid by the Family Mediation Service or for services provided by a mediator designated by the Service or by more than one mediator.

The Minister of Justice, by order, determines the conditions subject to which technological means can be used by the Family Mediation Service, and specifies other services the Service can provide as well as the applicable conditions.

TITLE III

ARBITRATION

CHAPTER I

APPOINTMENT AND ROLE OF ARBITRATORS

625. An arbitrator is appointed by mutual agreement of the parties, unless they ask a third person to make the appointment. The parties can decide to appoint more than one arbitrator, in which case each party appoints one arbitrator, and the two so appointed appoint the third.

If an arbitrator has to be replaced, the procedure for the appointment of arbitrators applies.

626. The arbitrator decides the dispute in accordance with the rules of law that he or she considers appropriate and on the basis of the stipulations of any contract between the parties and of applicable usage. If warranted, the arbitrator awards damages.

The arbitrator's role includes attempting to reconcile the parties if circumstances permit. The arbitrator can act as amiable compositeur if the parties have so agreed.

In all cases, the arbitrator must see that the rules of public order are complied with.

627. If an arbitrator is unable to carry out the arbitration mandate or fails to perform his or her duties within a reasonable time, a party can ask the court to revoke the appointment.

628. An arbitrator must declare to the parties any ground of recusation to which he or she is liable.

An arbitrator can be recused if there is serious reason to doubt his or her impartiality or if he or she does not have the qualifications agreed by the parties.

629. A party calling for the recusation of an arbitrator must set out the reasons in a document and notify it to the arbitrator and the other parties or, as applicable, to the other arbitrators within 15 days after the appointment or after becoming aware of the ground for recusation.

If more than one arbitrator has been appointed, the other arbitrator or arbitrators must rule on the possible recusation unless the arbitrator concerned withdraws or a party objects to the recusation.

The party calling for the recusation can ask the court to rule on the matter within 30 days of being advised that the recusation cannot be so obtained. The arbitrator concerned and, if there are more than one, the other arbitrators can nonetheless continue the arbitration proceedings and render the award while the court ruling is pending.

630. If the appointment process proves difficult, the court, on a party's request, can take any necessary measure to facilitate the appointment of an arbitrator. If a party fails to appoint an arbitrator within 30 days after having been advised by another party to do so, the court can make the appointment. The court must appoint an arbitrator if, 30 days after two arbitrators are appointed, they cannot agree on the choice of the third arbitrator.

If the procedure for the revocation of an arbitrator's appointment or for recusation of an arbitrator proves difficult to put into practice, a party can ask the court to rule on the matter.

The decision of the court cannot be appealed.

631. Unless otherwise provided, the court cannot intervene on any issue on which the parties have an arbitration agreement. If a demand is instituted regarding the dispute, the court must, on a party's request and for so long as the case has not been brought before it, refer the parties back to arbitration, unless they have ended the agreement or the court finds the agreement to be null. In all cases, arbitration proceedings can be commenced or continued and an award made for so long as the date of the trial has not been set or the court has not ruled on the merits of the dispute.

The court can nevertheless grant interim measures before or during arbitration proceedings.

CHAPTER II

CONDUCT OF ARBITRATION

632. A party intending to submit a dispute to arbitration must so notify the other party, specifying the subject matter of the dispute.

The arbitration proceedings commence on the date of notification.

633. The arbitrator conducts the arbitration according to the procedure he or she determines, but is required to see that the adversarial principle and the principle of proportionality are observed.

The arbitrator has all the necessary powers for the exercise of arbitration functions, including the power to administer oaths, the power to appoint an expert and the power to rule on his or her own competence. If the arbitrator rules on his or her own competence, however, a party, within 30 days of being advised of the decision, can ask the court to decide the matter. For so long as the court has not done so, the arbitrator can continue the arbitration proceedings and render an award.

A decision of the court regarding the competence of the arbitrator cannot be appealed.

634. Proceedings are oral, but the arbitrator can agree with the parties to decide the matter on the face of the record. In either case, a party can state its case in writing.

The arbitrator can require each of the parties to disclose to him or her and to the opposite party, within an allotted time, a statement of its claims and the exhibits mentioned in it. The expert's reports and the other documents on which the award may be based must also be disclosed to the parties.

The arbitrator advises the parties of the date of the hearing and, if applicable, of the date on which he or she will inspect the property or visit the premises. The arbitrator can request assistance in gathering evidence.

635. If a party fails to state its claims, appear at the hearing or present evidence in support of its claims, the arbitrator, after recording the default, can continue the arbitration.

However, if the party that submitted the dispute to arbitration fails to state its claims, the arbitration is ended unless another party objects.

636. Witnesses are summoned, compensated and heard according to the rules applicable to a trial before the court.

If, without a valid reason, a person summoned as a witness refuses to attend, to answer or to produce real evidence in his or her possession, a party, with leave of the arbitrator, can ask the court to compel the person to do so.

637. In the exercise of his or her functions, the arbitrator can render any interim decision or any decision to preserve the rights of the parties. Such a decision is binding on the parties, but, if necessary, a party can ask the court to homologate the decision so it becomes enforceable as a judgment of the court.

CHAPTER III

ARBITRATION AWARD

638. The arbitration award must be rendered in writing within three months after the matter is taken under advisement, state the reasons on which it is based and be signed by the arbitrator or, if there is more than one, the arbitrators. In the latter case, if one of the arbitrators refuses or is unable to sign the award, the others record that fact, and the award has the same effect as if it were signed by all of them.

An arbitrator is bound to preserve the confidentiality of the arbitration process and keep the deliberations secret but commits no breach of secrecy by stating his or her conclusions, and the reasons on which they are based, in the award.

Decisions made during the arbitration process are subject to the same rules. However, if there is more than one arbitrator, one of them, with authorization of the parties or of all the other arbitrators, can rule alone on questions of procedure.

639. If the parties settle the dispute, the agreement is recorded in an arbitration award.

640. The arbitration award binds the parties as soon as it is rendered and must be communicated to each of them. It is deemed to have been made at the date and place specified in the award.

641. The arbitrator, on his or her own initiative or on request, can correct any clerical error in the arbitration award within 30 days after it is rendered.

The arbitrator can also, on request, within the same time, render an additional award on a part of the demand not dealt with in the award, or interpret a specific passage of the award, unless the other party objects. Such an interpretation forms an integral part of the award.

An additional or interpretation award must be rendered within two months after it is requested. If this is not done before the expiry of the prescribed time, a party can ask the court to issue an order to preserve the rights of the parties. The court's decision cannot be appealed.

CHAPTER IV

HOMOLOGATION OF ARBITRATION AWARD

642. An arbitration award is not subject to forced compliance unless it has been homologated by the court.

The court examining a demand for the homologation of an arbitration award cannot review the merits of the dispute. However, it can postpone its decision if the arbitrator has been asked to correct, complete or interpret the award. In such a case, if the party demanding the homologation so requires, the court can order a party to provide security.

643. The court cannot refuse to homologate an arbitration award unless

(1) one of the parties did not have the capacity to enter into the arbitration agreement;

(2) the subject matter of the dispute is not one that can be resolved by arbitration in Québec, the arbitration agreement is invalid under the law selected by the parties or, failing any indication in that regard, under Québec law;

(3) the mode of appointment of the arbitrator or the applicable arbitration procedure was not observed;

(4) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;

(5) the award deals with a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope

of the agreement. In the latter case, however, only the irregular provision is not homologated if it can be dissociated from the rest; or

(6) the award is contrary to public order or would bring the administration of justice into disrepute. In such a case, the court, even on its own initiative, can decide to refuse to homologate and enforce the award.

644. The court can refuse to homologate an interim or preservation measure for the same reasons it can refuse to homologate an arbitration award. The court can also refuse to homologate such a measure if the arbitrator's order to provide security was not complied with or if the measure was revoked or suspended by the arbitrator or annulled or suspended by a court competent to do so.

CHAPTER V

SPECIAL PROVISIONS APPLICABLE TO INTERNATIONAL COMMERCIAL ARBITRATION

645. If interests of international trade are involved in an arbitration, consideration may be given, in interpreting this Title, to the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, and its amendments.

Recourse may also be had to the following documents related to that Model Law:

(1) the Report of the United Nations Commission on International Trade Law on its eighteenth session held in Vienna from 3 to 21 June 1985; and

(2) the Analytical Commentary on the draft text of a model law on international commercial arbitration contained in the report of the Secretary-General to the eighteenth session of the United Nations Commission on International Trade Law.

646. Interests of international trade are considered to be involved in an arbitration if, for example, the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States or if the place where they choose to conduct the arbitration is outside the State in which they have their places of business; if the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject matter of the dispute is most closely connected, is outside the State in which they have their places of business; or if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

647. In international commercial arbitration, disputes are arbitrated by three arbitrators. The arbitrators decide the dispute according to the rules of law that they consider appropriate, and, if warranted, award damages.

In all cases, the arbitrators decide in accordance with the stipulations of the contract and on the basis of applicable usage.

CHAPTER VI

ANNULMENT OF ARBITRATION AWARD

648. An arbitration award can only be challenged by way of a demand for its annulment.

The demand must be introduced within three months after the arbitration award, the additional or interpretation award or the decision on a request for a correction is rendered. This time limit is strict. The demand can be introduced at any time in defence against a demand for homologation.

A demand for the annulment of an arbitration award is subject to the same rules as those governing a demand for the homologation of such an award, with the necessary modifications.

649. The court, on a request, can suspend the demand for annulment for the time it considers necessary to allow the arbitrators to take such action as will eliminate the grounds for annulment, even if the time prescribed for correcting, completing or interpreting the award has expired.

CHAPTER VII

RECOGNITION AND ENFORCEMENT OF ARBITRATION AWARDS RENDERED OUTSIDE QUÉBEC

650. An arbitration award rendered outside Québec, whether or not ratified by a competent authority, can be recognized and declared enforceable as a judgment of the court. The same applies for interim or preservation measures.

Consideration may be given, in interpreting the rules in this matter, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration at New York on 10 June 1958.

651. A demand for recognition and enforcement of an arbitration award is brought before the court that would have had competence in Québec to rule on the dispute submitted to the arbitrator.

The arbitration award and the arbitration agreement, both authenticated by an official representative of the Government of Canada, by a delegate-general, delegate or head of post of Québec posted outside Québec, or by the government or a public officer of the place where the award was made, must be filed in the record.

652. The court examining a demand for recognition and enforcement of an arbitration award or of an interim or preservation measure cannot review the merits of the dispute.

However, a party against whom an arbitration award or an interim or preservation measure is invoked can oppose its recognition and enforcement by establishing that

(1) one of the parties did not have the capacity to enter into the arbitration agreement;

(2) the subject matter of the dispute is not one that can be resolved by arbitration in Québec or the arbitration agreement is invalid under the law selected by the parties or, failing any indication in that regard, under the law of the place where the arbitration award was rendered or the measure determined;

(3) the appointment of the arbitrator or the arbitration procedure was not in accordance with the arbitration agreement or, failing such an agreement, with the law of the place where the arbitration was held;

(4) the party against whom the award or the measure is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;

(5) the award deals with a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement. In the latter case, however, if the irregular provision can be dissociated from the rest, the other provisions can be recognized and declared enforceable;

(6) the arbitration award has not yet become binding on the parties or has been annulled or suspended by a competent authority of the place where or under whose law the arbitration award was made; or

(7) the award or measure is contrary to public order or would bring the administration of justice into disrepute. In such a case, the court, even on its own initiative, can decide to refuse to homologate and enforce the award.

The court can also refuse to recognize an interim or preservation measure if the arbitrator's order to provide security was not complied with or if the measure was revoked or suspended by the arbitrator.

653. The court can postpone its decision in respect of recognition and enforcement of an arbitration award if a demand for the annulment or suspension of the award or the interim or preservation measure is pending before the competent authority.

If the court postpones its decision, it can, on the request of the party demanding recognition and enforcement of the award, order another party to provide security.

BOOK VIII

EXECUTION OF JUDGMENTS

TITLE I

PRINCIPLES AND GENERAL RULES

CHAPTER I

GENERAL PROVISIONS

654. Judgments, including decisions of an administrative tribunal or a public body filed with the court and juridical acts on which the law confers the force of a judgment, are executed by the payment of money, the surrender of property or the performance of an act as ordered, before the expiry of the time limits prescribed by law, set out in the judgment or agreed between the parties.

Execution can be forced if the debtor refuses to comply voluntarily and the judgment has become final. However, if a default judgment is rendered following the defendant's failure to answer the summons or to defend on the merits, its execution can be forced 10 days after it is rendered.

A judgment that has yet to become final can be executed if the law permits or the court orders its provisional execution.

655. After the judgment, the court can make any order to facilitate execution, whether forced or voluntary, in the manner most advantageous to the parties and most appropriate to their interests.

656. Any demand, contestation or opposition with respect to execution must be presented before the court that rendered the judgment as if it were a demand in the course of a proceeding. It must be heard and decided without delay.

It can also be presented without formality if the person presenting it would be eligible to bring a demand under the rules of Title II of Book VI. In that case, the rules of representation applicable under that Title also apply with respect to execution.

657. Acts necessary for the purpose of executing a judgment are performed by a court bailiff acting as court officer under the authority of the court.

CHAPTER II

PROVISIONAL EXECUTION

658. A judgment is provisionally executed as of right, if the judgment

(1) grants an alimentary pension or allowance, determines arrangements regarding the custody of children or adjudicates on parental authority;

(2) orders the return of a child to a parent under the Act respecting the civil aspects of international and interprovincial child abduction;

(3) appoints, removes or replaces a tutor, curator or other administrator of the property of others, or revokes a protective mandate;

(4) orders, in the absence of a lease, urgent repairs or eviction;

(5) orders an accounting, an inventory or any measure for the liquidation of a succession;

(6) adjudicates on the possession or sequestration of property or on an improper use of procedure, or orders a provision for costs; or

(7) rules on legal costs, but only with respect to the portion not exceeding \$15,000.

The judge can order the stay of provisional execution by a decision giving reasons. A judge of the Court of appeal can also do so.

659. If bringing the case to appeal is likely to cause serious or irreparable prejudice to one of the parties, the judge, if so requested, can order provisional execution, even for part only of the judgment. The judge can also make provisional execution conditional upon the provision of a surety.

If provisional execution has not been ordered by the judgment itself, it cannot be ordered subsequently except on appeal, with or without a surety. A judge of the Court of appeal can also stay or lift provisional execution if it has been ordered, or order that a surety be provided by a party that was exempted from doing so by the court of first instance.

CHAPTER III

VOLUNTARY EXECUTION

DIVISION I

PAYMENT

§1.— *General rule*

660. A judgment ordering the payment of money is executed voluntarily by payment of the money to the adverse party at the time and in accordance with the other terms set by the judgment or agreed between the parties.

§2.— *Payment in instalments*

661. Payment in instalments is a mode of execution by which the debtor gives an undertaking to the executing bailiff to make regular payments for the benefit of the creditor in satisfaction of the judgment. The amounts, due dates and other terms of payment are set out in an agreement, which must be approved by the creditor.

The instalments cannot be spread over more than one year. The debtor can, at any time, waive the benefit of paying in instalments by discharging the balance.

The instalment payment agreement is filed with the court and recorded in the execution register, as is any waiver of that mode of payment or forfeiture of the benefit of the term.

§3.— *Voluntary deposit*

662. Voluntary deposit is a mode of execution by which the debtor undertakes by means of a declaration, which is deemed to be sworn, to make regular payments to the court, which cannot be less than the seizable portion of his or her income, and to give notice without delay to the court clerk of any change in his or her situation.

The declaration is filed with the court and recorded in the execution register. It contains, in addition to the debtor's contact information and a declaration as to his or her income, family responsibilities and creditors, a determination of the amount payable and the terms of payment. The time within which any change must be disclosed and the supporting documents to be furnished by the debtor are also specified.

663. The debtor is exempted from seizure so long as he or she fulfils the undertaking described in article 662, and creditors can neither sue the debtor nor seize his or her property. Prescription of their right of action against the debtor is suspended.

If the debtor fails to fulfil the undertaking, he or she has 30 days to remedy the situation counting from notification of a notice from the court clerk enjoining him or her to do so. If in default, the debtor loses the benefit of the voluntary deposit provisions unless he or she invokes a serious reason, in which case the court clerk can grant a maximum additional extension of 30 days.

The debtor can, at any time, waive the benefit of the voluntary deposit provisions by means of a notice notified to the court clerk, who records it in the execution register and informs the creditors and, if applicable, the bailiff.

664. The court clerk notifies the debtor's declaration to the creditors specified in it and invites them, for the purpose of participating in the distribution, to make representations and file their claim with the court. The court clerk gives the declared list of creditors to any creditor who requests it.

Creditors are bound to file their claim within 15 days of notification. The claim must set out the nature, date and amount of the debt and must include supporting documents. It is deemed to have been notified on the date of the debtor's declaration.

A creditor who delays in notifying a claim or in filing supporting documents is only entitled to the amount determined according to the debtor's declaration until the creditor remedies the delay.

665. A creditor or any other interested person can, within 15 days of becoming aware of it, contest the debtor's declaration. The contestation must be notified to the debtor, the court clerk and, if applicable, the bailiff.

666. The court clerk distributes the sums collected according to the provisions on distributing seized income. The court office fees and costs are included in the execution costs.

When the full amount of a claim has been paid to a creditor, the court clerk notifies a notice of payment to the debtor and the creditor. If the notice is not contested by the creditor within 15 days of the notification, the court clerk can, on request, give an acquittance, certifying on the debtor's copy of the notice of payment that it has not been contested.

667. A seizure under the Act to facilitate the payment of support is effective even if the debtor of support avails himself or herself of voluntary deposit. In such a case, the amount seized under that Act is subtracted from the amount to be deposited with the court clerk.

668. If a contracting party, an employer or another third person substantially changes or ends a contractual relationship with the debtor, the onus is on that person to prove that the action was not taken because the debtor consented to voluntary deposit.

DIVISION II

SURRENDER

669. A judgment ordering the delivery of movable or immovable property is executed by the delivery of the movable property or the surrender of the immovable property so that the party entitled to it can take possession of it. However, the judgment can provide for another means of surrender.

DIVISION III

SURETYSHIP

670. A judgment requiring a suretyship must set the amount of the surety's liability and the time within which the surety is to be presented.

671. The judgment is executed by filing with the court a notice presenting the surety, or stating the intention of the person supplying the suretyship to instead provide other sufficient security instead and specifying the nature of that security.

By undertaking to act as surety, the surety agrees to show solvency, to provide information on guaranties and on property owned, and to furnish the titles to that property.

The surety or the other security can be contested if the qualifications or characteristics required by law are not met or if the amount or guaranty provided is insufficient.

672. If the surety is accepted, the suretyship agreement is filed with the court and subsists despite a revocation of judgment or an appeal.

DIVISION IV

ACCOUNTING

673. A judgment ordering an accounting is executed within the time set by the judgment by notifying the account and supporting documents to the party that demanded the accounting. On such notification, the accounting party and its agent can be examined on any fact relating to the account, or be required to hand over any relevant document.

674. The account is prepared according to generally accepted accounting standards and the rules of the Civil Code dealing with the administration of property of others. Receivables are considered as income, and the cost of preparing and verifying the account, as expenditure. The legal costs are not taken into consideration, unless the court so allows.

675. The account is deemed to have been accepted if the party that demanded it has not contested it within 15 days of notification. The balance, if any, is then due.

To contest the account, a party files its grounds and their justification. The grounds are deemed valid if, within 10 days of notification, the party required to account has not filed its grounds and their justification. After the filing of grounds, the parties proceed to trial.

The judgment with regard to the contestation must determine the precise balance of the account.

676. Failing voluntary execution, the party that demanded the accounting can prepare the account and have it set down for judgment. In that case, the party required to account cannot debate the account but can cross-examine the witnesses.

CHAPTER IV

FORCED EXECUTION

DIVISION I

GENERAL RULES

677. Forced execution is undertaken by the judgment creditor if the debtor does not execute the judgment voluntarily.

678. A creditor who wishes to force execution gives execution instructions to a bailiff.

The instructions direct the bailiff to seize and sell the debtor's property or to seize the debtor's income to satisfy the claim. The instructions can also direct the bailiff to place the seizing creditor in possession of property or to evict the person against whom the judgment has been rendered. The instructions must contain the information the bailiff needs to execute the judgment.

The creditor must give the bailiff, together with the instructions, the money necessary for the execution of the judgment.

679. Execution begins by the filing of an execution notice with the court and in the execution register recognized by the Minister of Justice.

The notice, prepared by the bailiff on receipt of the creditor's instructions, contains the text determined by the Minister of Justice for such notices and identifies the judgment to be executed, stating its date, the name and contact information of the creditor, the debtor and the bailiff and the amount of the claim. It mentions, if applicable, that the judgment has been partially executed

and describes the execution measures to be taken. If the judgment to be executed concerns an immovable, the immovable is described in accordance with the rules of the Civil Code, and its address is given.

680. All execution measures are set out in a single execution notice. The notice can be amended to complete execution if the creditor gives new instructions or if another creditor commences execution of another judgment against the same debtor. In the latter case, the new creditor must join in the execution proceedings already commenced and give the creditor's own instructions to the executing bailiff.

The bailiff files an amended notice with the court and in the execution register. The notice identifies any creditor joining in the execution proceedings, sets out the particulars of that creditor's claim and states any additional execution measures deemed appropriate.

DIVISION II

RIGHTS AND OBLIGATIONS OF PARTICIPANTS IN EXECUTION PROCESS

§1.—*General provisions*

681. On notification of an execution notice, all participants in the execution process must act in good faith, cooperate in the proper execution of the judgment and abstain from doing anything likely to hinder it.

In addition, bailiffs and creditors must act in a commercially reasonable manner in the exercise of their rights and the performance of their obligations. Debtors must inform the bailiff of their patrimonial situation.

682. On notification of an execution notice, the debtor must provide the bailiff with his or her home and work contact information.

The court or the court clerk can, on the bailiff's request, order a person to provide the bailiff with the information the person has on the debtor's home and work contact information.

The order is enforceable despite any provision to the contrary in a general law or special Act providing for the confidentiality or non-disclosure of certain information or documents, subject to compliance with professional secrecy.

§2.—*Court bailiffs*

683. Bailiffs have a duty of impartiality towards all participants in the execution process, as well as a general duty to provide information. Bailiffs can perform any act necessary for the exercise of their functions.

Specifically, bailiffs must inform debtors and any garnishees of the content of the execution notice and of their rights, and, on their request, explain the execution process to them. Bailiffs must also carry out the creditors' instructions in the manner that is most advantageous not only for them but for all parties.

Bailiffs cannot be sued for an act performed in good faith in the exercise of their functions under this Book.

684. If a bailiff must use force to enter a place for the purpose of seizing or removing property or evicting a person, he or she must, before entering, obtain the authorization of the court clerk. Once inside, the bailiff has access to all rooms and property on the premises.

The court can make an order directing police to assist the bailiff.

685. Bailiffs have, with respect to seized property, the powers of an administrator of the property of others charged with simple administration.

The money seized by a bailiff, paid to a bailiff under an instalment payment agreement or derived from the disposition of property is deposited in a trust account until distribution.

DIVISION III

POST-JUDGMENT EXAMINATION

686. When a judgment has become enforceable, the judgment creditor or the bailiff can examine the debtor as to his or her income, obligations and debts, the money owed to him or her, any property he or she owns or has owned since incurring the obligation that is the basis for the judgment, and the property affected by the judgment. During the examination, the debtor can be required to communicate a document.

The creditor or the bailiff can also examine any other person capable of giving information about the debtor's patrimony or any rights entered in the land register or the register of personal and movable real rights. If a person does not consent to being examined, the creditor or the bailiff must obtain the authorization of the court to conduct the examination.

687. The creditor or the bailiff must inform the witness to be examined of the nature of the examination and agree with the witness on its time and place. If they cannot agree, the witness is summoned to appear before the court on the date specified in the subpoena, which is notified to the witness at least five days before that date.

The deposition of the witness being examined is governed by the rules applicable to testimony given at trial. It is recorded, unless waived by the parties.

Any difficulty arising during the examination of the witness must be submitted to the court as soon as possible for a decision.

DIVISION IV

RULES APPLICABLE IN EVENT OF DEATH OR INCAPACITY

688. The death of the debtor or the creditor does not interrupt the execution of the judgment.

If the debtor dies before a seizure is made, the judgment cannot be executed against the property of the succession until 10 days after service of the judgment on the liquidator, under pain of nullity of the seizure.

If the creditor dies, the judgment can be executed in the creditor's name unless it orders the performance of something that is purely personal to the creditor.

689. A judgment rendered against the representative of an incapable person, in that capacity, cannot be executed against the incapable person when he or she has become capable until 10 days after it has been served on him or her.

A judgment rendered in favour of a representative can be executed in the representative's name, even after he or she ceases to be a representative.

DIVISION V

SPECIAL RULES APPLICABLE TO FORCED EXECUTION IN REAL ACTIONS

690. If a party ordered to deliver or surrender property fails to do so within the time set by the judgment ordering the eviction of the debtor or the delivery of property or by a subsequent agreement between the parties, the creditor can be placed in possession of the property by the execution notice.

If it involves eviction, the notice must be served at least five days before it is executed. However, if the debtor is to be evicted from his or her family residence, the notice must be served at least 30 days beforehand. On the debtor's request, the court can extend the notice period by not more than three months if eviction would cause the debtor serious prejudice. The notice period cannot be extended beyond the term of a lease, however.

No eviction can be carried out between 20 December and 10 January.

691. If, on being evicted, a debtor leaves movable property in the immovable, the bailiff can temporarily leave the property on the premises or store it, at the option of the seizing creditor. In such a case, the bailiff notifies a notice to the debtor ordering the removal of the property within 10 days and payment of the costs incurred.

On the expiry of that time, the debtor is deemed to have abandoned the property and the bailiff can sell it for the benefit of the creditor, give any property not likely to be sold to a charity or, if it cannot be given, otherwise dispose of it as the bailiff sees fit.

DIVISION VI

EXEMPTION FROM SEIZURE

692. Debtors have the right to protect from seizure

(1) the movable property that furnishes or adorns their main residence, and the personal objects they designate up to a market value of \$7,000 as determined by the bailiff;

(2) the food, fuel, linens and clothing necessary for the life of the household, and domesticated pets; and

(3) the instruments of work needed for the personal exercise of their professional activities.

Nevertheless, with the exception of the property mentioned in subparagraph 2, the property described in the first paragraph can be seized and sold for the amounts owed on the sale price, or seized and sold by a creditor holding a hypothec on the property, as applicable.

Any waiver of the exemptions from seizure is null.

693. A motor vehicle having a market value of less than \$10,000 as seized property cannot be seized if it is necessary in order to maintain work income or an active job search or to meet the basic needs or the health or educational needs of the debtor and his or her dependants. Nevertheless, the bailiff can seize the motor vehicle if he or she considers that the debtor can meet essential travel needs by using public transit or another available vehicle.

If the motor vehicle has a market value greater than \$10,000 and is necessary to meet the debtor's essential travel needs, the debtor can demand that the bailiff remit enough money, up to \$10,000, from the sale price for the debtor to purchase another motor vehicle.

A motor vehicle's exemption from seizure cannot be invoked against the seller or the hypothecary creditor as regards the amounts owed on the sale price, nor can it be invoked in the case of a seizure under the Code of Penal Procedure.

694. The following are exempt from seizure:

(1) consecrated vessels and other things used for religious worship;

(2) family papers, family portraits and other family documents, as well as medals and other decorations;

(3) books of account, debt securities and other papers in the possession of the debtor, except bonds, promissory notes and other instruments payable to order or to bearer;

(4) contributions paid or to be paid into a supplemental pension plan to which an employer contributes on behalf of the employees, or into a retirement instrument;

(5) the capital accumulated for the payment of an annuity or accumulated in a retirement instrument if the capital has been alienated or is under the control of a third person and satisfies the other prescriptions of law;

(6) things required to meet disability needs or to care for a sick person, and amounts reimbursed to the debtor for costs relating to an accident or illness; and

(7) anything declared unseizable by law.

The following are also exempt from seizure:

(1) lump sum amounts and compensation, other than income replacement indemnities, paid in execution of a judgment or under a public compensation plan covering costs and losses resulting from a person's death or from bodily or moral injury; and

(2) property declared by the donor or testator to be exempt from seizure, if the stipulation is made in an act by gratuitous title and is temporary and justified by a serious and legitimate interest. Nevertheless, the property can be seized by creditors whose claims are subsequent to the gift or the opening of the legacy, with the permission of the court and to the extent it determines.

Up to 50% of the property described in the second paragraph can, however, be seized to execute partition of a family patrimony, a claim for support or a compensatory allowance, or a judgment ordering the payment of damages for bodily injury caused by an intentional or gross fault.

695. Works of art and other cultural or historical property brought into Québec and placed or intended to be placed on public exhibit in Québec are exempt from seizure if the Government declares them so by order, for the period specified in the order. The order comes into force on its publication in the *Gazette officielle du Québec*.

Such exemption from seizure does not prevent the execution of a judgment against the property, if the property was originally conceived, produced or created in Québec, or the execution of a judgment enforcing a service contract relating to the transportation, warehousing or exhibition of the property.

696. The portion of a debtor's income that is subject to seizure is determined by the formula $(A-B) \times C$.

A is the debtor's income, made up of

(1) remuneration in money, kind or services, paid for services provided in the exercise of an office or under an employment or service contract or a contract of enterprise or mandate, after subtracting all expenses allowable for tax purposes which are incurred to earn the remuneration;

(2) money paid as a retirement benefit, a pension, an income replacement indemnity, judicially awarded support, an employment-assistance or support allowance and last resort financial assistance, this money, however, being exempt from seizure in the hands of the payer; and

(3) capital withdrawn from a retirement instrument and not reinvested in a retirement instrument exempt from seizure.

However, the following are not included in the debtor's income:

(1) support declared by the donor or testator to be exempt from seizure, except for the portion determined by the court;

(2) judicially awarded support, if intended to provide for a minor child;

(3) employer contributions to a retirement, insurance or social security service fund; or

(4) the value of food and lodging provided or paid by the employer for work-related travel.

B is the total of the exemptions to which the debtor is entitled for his or her basic needs and those of his or her dependants. It is either a percentage of the annual amount granted as a social solidarity allowance, but calculated on a weekly basis, or the total amount received under and declared unseizable by the Individual and Family Assistance Act. The applicable percentages are as follows: 125% of the amount for the debtor, 50% for the debtor's first dependant and 25% for any other dependant.

C is the seizure percentage of 30%. However, in the case of the execution of partition of a family patrimony, a claim for support or a compensatory allowance or a judgment ordering the payment of damages for bodily injury caused by an intentional or gross fault, the percentage is 50%.

697. The debtor who does not have a regular source of income must, to benefit from exemption from seizure, enter into an instalment payment agreement with the bailiff or a voluntary deposit agreement with the court clerk. The debtor benefits from exemption from seizure so long as the undertakings in the agreement are complied with.

698. The immovable serving as the principal residence of the debtor can be seized to execute a claim for support or another claim of at least \$20,000, not including legal costs. It can also be seized to execute a claim of any amount secured by a prior claim or a hypothec on the immovable. In the case of a legal hypothec arising out of a judgment, however, the amount of the claim must be at least \$20,000.

699. A decision made by the bailiff under the exemption from seizure rules can be reviewed by way of a demand brought before the court.

TITLE II

SEIZURE OF PROPERTY

CHAPTER I

GENERAL PROVISIONS

700. A judgment creditor can exercise different means of execution at the same time.

A judgment creditor can seize any movable property of the debtor that is in the possession of the debtor, in the possession of the creditor or in the possession of third persons. The creditor can also seize any immovables that belong to the debtor.

The effect of seizure is to place the property belonging to the debtor under judicial control.

701. Movable property is seized by the bailiff on the premises where the property is located. Income or money is seized in the hands of the third persons who owe it to the debtor, through notification of the execution notice to them.

Fruits and other products of the soil that are seized are considered movable property even if they are not separated or extracted from the land.

702. Movable property can be seized between 7 a.m. and 9 p.m. on any day except on a holiday, through service of the execution notice on the debtor and the garnishee. It can be seized outside those hours with the permission of the court clerk obtained informally and recorded on the execution notice, and even on a holiday in the event of removal, conveyance or abandonment of the property.

A seizure not completed at 9 p.m. can be continued without formality past that time if the bailiff considers it necessary in the interest of the parties. Otherwise, it is continued as soon as possible on the following working days, after taking the necessary security measures.

703. An immovable is seized through entry of the execution notice in the land register and service of the notice on the debtor. The notice can be served at the domicile elected by the debtor in the deed of sale or hypothec if he or she is absent or not easily traceable.

The registrar registers the seizure on notification to the registrar of the notice with proof of service on the debtor.

704. Immovables by virtue of article 903 of the Civil Code, that is, movables that are permanently and physically attached or joined to an immovable, can only be seized with the immovable to which they are attached or joined; however, they can be seized separately by a prior or hypothecary creditor, or by another creditor if they do not belong to the owner of the immovable.

705. A seizure is recorded in minutes prepared by the bailiff. The minutes must mention whether or not the debtor was present at the time of the seizure, and contain

- (1) mention of the title under which the seizure is made;
- (2) the date of the execution notice and the name of the seizing creditor;
- (3) the date and time, and the nature, of the seizure;
- (4) a description of the property seized; and
- (5) the name of the custodian, if any.

In the case of a seizure of movable property, the minutes must also contain a list and the market value of the movable property left to the debtor, if the value of the property seized is insufficient to pay the claim of the seizing creditor.

The minutes are notified to the debtor and the seizing creditor, as well as to all creditors having rights in the seized property and to any third person appointed as custodian.

706. Before seizing movable property of an enterprise, a road vehicle or other movable property which, according to the regulation under article 2683 of the Civil Code, can be hypothecated or a group of such items of property, the bailiff must verify in the register of personal and movable real rights whether rights were granted in the property or group of items of property if the bailiff estimates its market value to be \$2,000 or more.

707. The debtor has 20 days from the seizure in the case of movable property, and 60 days in the case of immovable property, to sell the seized property. If the debtor waives this right or fails to exercise it within the prescribed time, the bailiff can sell the seized property.

A sale by the debtor is subject to the approval of the bailiff, who determines whether it is commercially reasonable, and to the deposit of the price in the hands of the bailiff.

In such a case, the bailiff must notify a notice of sale to the seizing creditor, all creditors having rights in the seized property and the garnishee, who have 10 days to oppose the sale. If no opposition is filed, the sale can be concluded on the expiry of that time.

708. At any time before the sale of seized property, the debtor can obtain release of seizure by paying the amount of the judgment, including execution costs. If the seizure of certain property causes prejudice to the debtor and if the bailiff authorizes it, the debtor can also replace the seized property by property whose sale will allow full satisfaction of the judgment.

If the debtor obtains release of seizure before the sale of the property, the bailiff attests to the release of seizure on the request of any interested person.

CHAPTER II

SEIZURE IN THE HANDS OF THIRD PERSONS

DIVISION I

GENERAL RULES

709. The execution notice notified to the garnishee directs the garnishee to prepare a document for the bailiff declaring the amount, nature and terms of the garnishee's indebtedness to the debtor. The garnishee must provide with the declaration a detailed statement of the property of the debtor in the garnishee's possession, specifying under what title the garnishee holds the property. The garnishee must also declare any seizures made in the garnishee's hands.

The declaration is notified to the seizing creditor and the debtor, who have 10 days to contest it. It is registered in the execution register.

710. Seizure makes the garnishee the custodian of the property seized.

On the bailiff's request, the garnishee must deliver to the bailiff the property of the debtor in the garnishee's possession and all documents relating to the garnishee's indebtedness toward the debtor. In addition, the seizing creditor or the bailiff can expressly require the garnishee to submit to an examination to complete the garnishee's declaration, as if it were a post-judgment examination.

711. If the indebtedness of the garnishee is a term debt, the garnishee must pay the bailiff at maturity. If it is subject to a condition or to the performance

of an obligation by the debtor, the seizure is binding until the condition is fulfilled or the obligation performed.

712. If the garnishee declares not being indebted to the debtor, and the garnishee cannot be proved to be so indebted, the garnishee, as well as the debtor, can obtain a release of seizure from the bailiff, with execution costs to be borne by the seizing creditor.

713. If the garnishee declares that the debtor works for the garnishee without being paid or for remuneration that is clearly less than the value of the services rendered, the bailiff can ask the court to value the services rendered and determine a fair remuneration. The demand is presented before the court at least five days after being notified to the debtor and the garnishee. The remuneration determined by the court is deemed to be the remuneration of the debtor from the date of the demand until it is shown that the amount should be changed. The court's decision cannot be appealed.

714. If the garnishee makes a false declaration, does not answer questions or refuses to carry out a seizure of income, the garnishee can be ordered to pay the amount owing to the seizing creditor as though the garnishee were the debtor.

The garnishee can, however, obtain leave to declare or deposit at any time, even after judgment, upon payment of the money the garnishee should have withheld and deposited since the notification of the execution notice. In such a case the garnishee is required to pay all costs resulting from the garnishee's default.

DIVISION II

GENERAL RULES AS TO SEIZURE OF INCOME

§1.—*Seizure of income*

715. If income of the debtor is seized, the garnishee must, within 10 days of notification of the execution notice, remit the seizable portion of what the garnishee owes to the debtor either to the bailiff if the bailiff is able to administer it or to the court clerk specified by the bailiff.

If the debtor has multiple sources of income, the bailiff, after calculating the seizable portion of the income, determines the portion that each garnishee must withhold and remit to the bailiff. If the sources of income are not easily ascertainable or are non-recurring, the bailiff determines, subject to an instalment payment agreement, the amount the debtor must pay to the bailiff.

If the garnishee substantially changes or severs the contractual relationship with the debtor whose income has been seized, the garnishee must declare this to the bailiff or the court clerk without delay, and it is then incumbent on the

garnishee to prove that the change or severance was not made because of the seizure of income.

The seizure remains binding for so long as the debtor's sources of income are maintained and until all claims filed by the creditors have been paid.

716. If a seizure of income is carried out under a judgment awarding an alimentary pension, it applies to payments to become due as well as to arrears, as indexed if applicable. It remains binding until release is given. The same applies if the seizure is carried out under the Family Orders and Agreements Execution Assistance Act (Revised Statutes of Canada, 1985, chapter 4, 2nd Supplement).

Release can be given on the expiry of one year after the payment of all arrears, if there is no other claim in the record and if execution has not been stayed. However, release cannot be given if the Minister of Revenue is acting in the capacity of claimant or seizing creditor under the Act to facilitate the payment of support.

717. If, while a seizure is binding or its execution is stayed, a judgment ordering partition of a family patrimony, awarding support or a compensatory allowance or awarding damages for bodily injury caused by an intentional or gross fault operates to change the amount that the garnishee must pay, the bailiff or the court clerk, on being informed of the judgment, must advise the garnishee, the debtor and the other parties.

§2. — *Stay of seizure with regard to support*

718. If a judgment awarding support has been executed by the creditor by a seizure of income and there is no other claim in the record, the bailiff or the court clerk, on the debtor's request and once the arrears are paid, can stay the execution of the seizure if the debtor undertakes to make the payments of support directly to the bailiff or the court clerk when due and provides sufficient guaranties to secure compliance with that undertaking.

Such a stay can be granted for not less than six months nor more than one year. The bailiff or the court clerk must advise the creditor of support and the other creditors, as well as the garnishee, who then ceases to make deposits. During that period, the bailiff or the court clerk pays the money received from the debtor to the creditor of support at least monthly.

719. The bailiff or the court clerk grants release of seizure if the seizure does not become enforceable again at the end of the stay.

The seizure becomes enforceable again if the debtor fails to make a payment when due, or if a claim is filed in the record of the debtor by a third person. The bailiff or the court clerk advises the creditor of support, the other creditors and the garnishee, who must, within 10 days after being advised, remit the

seizable portion of the debtor's income to the bailiff or the court clerk, as applicable.

CHAPTER III

SPECIAL RULES APPLICABLE TO CERTAIN SEIZURES

DIVISION I

SEIZURE ON PERSON OF DEBTOR

720. If the bailiff is convinced that the debtor has property of value on his or her person, the bailiff can ask the court for authorization to seize the property on the person of the debtor. The demand need not be notified to the debtor.

The bailiff must first ask the debtor to hand over the property. If the debtor refuses, the bailiff can search the debtor, with the assistance of a peace officer if need be. The search and seizure must be carried out in such a manner as to limit violations of personal rights and freedoms.

DIVISION II

SEIZURE OF SECURITIES OR SECURITY ENTITLEMENTS TO FINANCIAL ASSETS

721. Certificated securities are seized by seizure of the certificates, through service of the execution notice on the person holding the certificates and on the issuer or the issuer's transfer agent in Québec.

Uncertificated securities or security entitlements to financial assets are seized by serving the execution notice on the issuer or on the securities intermediary that maintains the debtor's securities account, as applicable.

722. Securities, whether certificated or uncertificated, or security entitlements to financial assets can be seized by serving the execution notice on a secured creditor if

(1) the certificates representing the securities are in the secured creditor's possession;

(2) the uncertificated securities are registered in the secured creditor's name in the issuer's records; or

(3) the security entitlements to financial assets are held in the secured creditor's name in a securities account maintained for the debtor by a securities intermediary.

723. The seizure of securities or security entitlements to financial assets entails the seizure of the interest, dividends, distributions and other rights attached.

724. When certificated securities are seized, the issuer must declare to the bailiff the number of securities held by the debtor, the extent to which the securities are paid up and the interest, dividends or other distributions declared but not yet paid.

DIVISION III

SEIZURE OF TECHNOLOGICAL MEDIA

725. On seizing a technological medium, the bailiff must inform the debtor or the garnishee, as applicable, of the right to transfer any documents he or she wishes to keep from the seized medium to another medium.

If custody of the seized medium has been entrusted to a third person, the debtor or the garnishee must advise the bailiff, within 15 days of the seizure, that he or she will be transferring documents.

The costs of the transfer are paid by the debtor or the garnishee, as applicable.

726. If there is no opposition to the seizure or the opposition has been dismissed, the bailiff destroys all documents on the medium before the sale.

If necessary, the bailiff can be assisted by a specialist. If any of the documents are covered by professional secrecy, the bailiff must be assisted in destroying the documents by a representative designated by the professional order of the debtor or the garnishee, as applicable.

DIVISION IV

SEIZURE OF PROPERTY IN SAFETY DEPOSIT BOX

727. Property in a safety deposit box is seized through the opening of the box and the drawing up of minutes of seizure by the bailiff. The minutes of seizure, which must mention the persons in attendance, the content of the safe and the property seized, are notified to the creditor and the debtor.

If the bailiff cannot obtain the debtor's cooperation in opening the safety deposit box, the court, on a demand, can authorize the opening of the box in the manner it determines. The demand is notified to the debtor and, if applicable, to the lessor and any other lessees of the box. As of the notification, the lessor is prohibited from giving access to the box in the absence of the bailiff.

DIVISION V

SEIZURE OF REGISTERED ROAD VEHICLES

728. A registered road vehicle is seized through entry of the notice of seizure in the register of personal and movable real rights and its notification to the Société de l'assurance automobile du Québec. The notice of seizure must contain the registration number and make of the seized vehicle and a reference to the execution notice.

No registration certificate can be issued for the seized vehicle for one year after notification of the notice of seizure, except if a release of seizure is granted.

CHAPTER IV

CUSTODY OF SEIZED PROPERTY

729. The bailiff gives custody of the seized property to the debtor, who must accept it. If the debtor is a legal person, the bailiff gives custody of the property to the officers or to one of the officers.

The bailiff can entrust the seized property to a custodian other than the debtor, if the latter is unable to provide custody or so requests. The bailiff can designate another custodian for any other serious reason, but must avoid giving custody of the property to an insolvent person or a person who may be placed in a conflict of interest situation as a result. The bailiff must ensure that custody costs are reasonable under the circumstances.

The seizing creditor, the creditor's attorney, their spouses and persons related to them by blood or connected to them by marriage or civil union up to the fourth degree cannot act as custodian, except if they are already in possession of the property and expressly consent to the seizure.

730. If the seizure is against an immovable, the bailiff can ask the court to appoint a sequestrator.

The sequestrator so appointed collects the fruits and revenues of the immovable, which, after deducting expenses, are immobilized to be distributed in the same manner as the proceeds of the sale.

731. The custodian, with the consent of the bailiff, can move the seized property. The custodian must produce the property on the bailiff's request and, on doing so, is entitled to a discharge or receipt for the property delivered.

If the custodian removes the property without the bailiff's consent, fails to produce it or damages it, the custodian can be held liable for contempt of court.

732. The bailiff can replace a custodian, other than the debtor, who has become insolvent or wishes to be discharged, for any cause considered sufficient.

Before entrusting the property to a new custodian, the bailiff draws up a report describing the condition of the property.

CHAPTER V

OPPOSITION TO SEIZURE AND SALE

DIVISION I

GENERAL PROVISIONS

733. The debtor, or a third person who has a right to revendicate seized property or any part of it, can oppose the seizure or proposed sale of the property and demand the nullity in whole or in part of the seizure or sale proceeding. The creditors of the debtor can only oppose the sale of seized property, and can do so only if the sale price is not commercially reasonable or if the sale is affected by serious irregularities.

The opposition must, within 15 days of notification of the minutes of seizure or the notice of sale, be notified to the bailiff, who enters it in the execution register, as well as to the debtor, the garnishee, the creditors and any person having rights in the property that have been entered in the land register or the register of personal and movable real rights.

734. An opposition is admissible only if it is based on the ground that

- (1) the seized property is exempt from seizure;
- (2) the debt is extinguished;
- (3) the sale price is not commercially reasonable; or

(4) the proceeding is affected by an irregularity resulting in serious prejudice, subject to the power of the court to authorize the bailiff or the seizing creditor to remedy the irregularity.

In addition, any person aggrieved by reason of seized property being advertised as being affected by a charge that prejudices the person's interests can oppose the property being sold subject to the charge, unless the person is given a sufficient guarantee that the property will be sold for a price which ensures payment of the person's claim.

A third person in whose favour the property is charged can also oppose the sale if the property is advertised without any mention of the charge and the charge will be discharged by the sale.

DIVISION II

EFFECTS OF OPPOSITION

735. Notification of an opposition stays execution.

If, however, the opposition is made solely to obtain a reduction of the amount claimed or a withdrawal from seizure of part of the seized property, it does not stay execution. The bailiff proceeds with execution to satisfy the uncontested part of the claim or to realize the property against which the opposition is not directed, unless the court orders a stay of all proceedings.

An opposition made after the prescribed time and notified before the sale cannot stop the sale, except if the court so orders on the opposing party showing sufficient cause.

736. An opposition to a seizure of income stays only the distribution of the money seized. However, if a judgment awarding support is being executed, the distribution of the income already seized is not stayed unless the court orders it stayed for exceptional reasons.

737. If the bailiff has received execution instructions or claims from two or more creditors, and an opposition relates to the instructions given by one of them only, the bailiff, so far as possible and after having advised the opposing party, continues to execute in order to satisfy the instructions and claims of the other creditors.

738. A person whose opposition is dismissed is liable towards the creditors, the debtor and the garnishee for the interest on the amount due to the creditors and for the costs of storing the property for the time during which execution was stayed.

739. An opposition by a person who has already made an opposition cannot stay execution unless it is based on facts that occurred after the first opposition was made and the stay is ordered by the court. The demand for a stay of proceedings, which can be made without formality, must be preceded by two days' notice to the seizing creditor, unless the court dispenses with such notice.

TITLE III

SALE UNDER JUDICIAL AUTHORITY

CHAPTER I

CONDUCT OF SALE

740. A sale under judicial authority is conducted to sell property seized to execute a judgment or property whose surrender is ordered upon the exercise of hypothecary rights.

741. The bailiff is in charge of the sale and responsible for all related operations. In performing duties, the bailiff is required to disclose to the interested persons and, in particular, at the time of the sale, to the purchaser that he or she is acting in the capacity of bailiff.

The bailiff must also keep the creditor, the debtor and any other interested person who so requests informed of any steps taken, and keep records that are sufficiently detailed for the rendering of an account to the court and to the interested persons.

If necessary, the bailiff can secure the assistance of a lawyer or a notary who has no ties to any of the parties. The bailiff can also ask the court for any instruction or order to facilitate the performance of his or her duties and ensure the most advantageous sale.

742. The bailiff has the option of selling by agreement, through a call for tenders or by auction. The bailiff sets the terms of the sale, subject to any conditions set by the judgment if the surrender of the property to be sold was ordered upon the exercise of hypothecary rights.

743. The sale must be made in the best interests of the owner of the property, the debtor and the creditors, at a commercially reasonable price and using the most appropriate mode of realization in the circumstances. The interests of co-owners, joint shareholders and partners must also be taken into account.

744. The bailiff can sell, without delay or formality, movable property that is perishable, likely to depreciate rapidly or expensive to preserve.

745. If several items of property have been seized, only those whose sale is necessary to pay the claims, including principal, interest and costs, can be sold, unless the debtor consents to the sale of all the seized property. The debtor has the right to determine the order in which the seized property is put up for sale.

CHAPTER II

REALIZATION

746. The bailiff can fix a minimum price for property offered for sale. The bailiff can seek an expert valuation if the value of the property justifies it.

747. Whether the sale is by agreement, through a call for tenders or by auction, it is preceded by entry of a notice in the execution register, as well as in the land register if the property is an immovable, or the register of personal and movable real rights if it is movable property for which a right has been registered. The notice of sale must be entered in the execution register at least 20 days before the date set for the sale.

The bailiff notifies the notice to the debtor, the garnishees and any creditors having made a claim. The holders of rights registered in the register of personal and movable real rights or in the land register receive notification from the registrar.

The bailiff can also, on the request and at the expense of the debtor or a creditor, publicize the sale beyond what is prescribed by law to achieve a better realization of the property.

748. The bailiff can take into consideration the representations of any interested person on the method of sale chosen, the terms of sale or the opening bid.

At any time before the sale of the property, an interested person who is not satisfied with the bailiff's response can go before the court to make representations or to oppose the sale. The sale is then stayed until the court makes its determination.

749. If the sale is stayed, either because a demand is pending, the court has ordered it or the debtor and the creditor have consented to it, notice of the stay is entered in the execution register.

750. In the case of a sale by agreement, the bailiff is deemed to represent the owner of the property for the conclusion of the contract of sale, which the bailiff has power to sign in the owner's name. The purchaser must pay the price to the bailiff.

751. In the case of a call for tenders, the bailiff has the option of issuing a public or limited one. Sufficient information must be included in the call for tenders to allow bidders to tender on a timely basis.

The bailiff is required to accept the highest tender unless the conditions attached to it render it less advantageous than another lower tender, or unless the price tendered is not commercially reasonable.

752. In the case of a sale by auction, the bailiff sets out in the notice of sale the nature of the property, the minimum price, if any, and sufficient information to allow bids to be made. The bailiff also sets out his or her name and contact information and, if applicable, those of the auctioneer selected.

If bids can be made by way of information technology, the notice must state how and when bids will be received and must specify the closing date.

753. At an auction sale, the bailiff or the auctioneer, as applicable, can, in the interest of the creditor or the debtor, refuse a bid, withdraw the property and put it up for sale again, with or without a minimum price, or end the sale.

754. The bailiff is not bound by the conditions and restrictions governing the transfer of shares of the capital stock of a legal person. However, the purchaser of the shares is subject to the conditions and restrictions set out in the constituting act of the legal person, its by-laws and any unanimous shareholder agreements. The purchaser must be informed of any restrictions tied to the shares purchased.

755. If property cannot be sold, the bailiff returns it to its owner. If the owner refuses the property, the bailiff can give it to a charity or, failing that, dispose of it as he or she sees fit.

CHAPTER III

SALE AND EFFECTS OF SALE

756. As soon as the sale is made, the bailiff enters a notice in the execution register setting out the nature of the property, the method of sale chosen, the charges on the property and the terms of the sale.

757. If, on the expiry of 10 days after the sale, the owner seller or the purchaser refuses to sign the deed of sale or to give up or take possession of the property, the bailiff, the seller or the purchaser can obtain an order from the court having the same force and effect as a deed of sale or an order for forced surrender of or eviction from the immovable or forced removal of the movable property.

758. A sale under judicial authority discharges all real rights not included in the terms of sale except

- (1) servitudes;
- (2) emphyteutic rights, superficiary rights, and substitutions not yet open, except when a prior or preferred claim is mentioned in the court record;
- (3) the administrative encumbrance affecting a low-rental housing complex; and
- (4) a lease registered in the land register.

A sale under judicial authority does not affect the legal hypothec securing the rights of legal persons established in the public interest in respect of special municipal or school taxes that are not yet due and the payment of which is spread over a certain number of years. Such taxes do not become due by reason of the sale of the immovable and are not collocated, but remain payable in accordance with the terms of their assessment.

759. A sale under judicial authority can be annulled on the demand of the purchaser if the purchaser is liable to eviction by reason of some real right from which the property is not discharged by the sale, or if the immovable

differs so much from the description in the notice of sale or the minutes of seizure that it is to be presumed that the purchaser would not have bought had the purchaser been aware of the true description. The sale can also be annulled on the demand of the debtor or a creditor if the property is sold for a non-commercially reasonable price.

The demand for the annulment of a sale under judicial authority must be notified within 20 days of the sale in the case of movable property, or within 60 days of the sale in the case of immovable property. It cannot be validly notified if more than three months have elapsed since the judgment in the case of movable property, or more than six months have elapsed since the judgment in the case of immovable property. These time limits are strict.

760. The sale of property is considered to have been made at a commercially reasonable price if, in light of the specific circumstances of the sale, the sale price corresponds, to the extent possible, to the market value of the property.

In the case of an immovable, the sale price cannot be less than 50% of its assessed value as entered on the municipal assessment roll, multiplied by the factor determined for that roll by the minister responsible for municipal affairs under the Act respecting municipal taxation (R.S.Q., chapter F-2.1), unless the court is convinced that the immovable cannot be sold within an acceptable time for a price equal to or greater than 50% of its assessed value.

TITLE IV

DISTRIBUTION OF PROCEEDS OF EXECUTION

CHAPTER I

GENERAL PROVISION

761. The bailiff who has sold property following a judicial authorization or a seizure or who has seized money is responsible for distributing the proceeds of the sale or the money seized. The bailiff or the court clerk who periodically collects income of a debtor is responsible for distributing the money to the creditors.

If necessary, the bailiff can secure the assistance of a lawyer or a notary in the preparation of the collocation scheme, or ask the court for any order to facilitate the distribution of the proceeds of the sale or the money seized.

CHAPTER II

DISTRIBUTION OF PROCEEDS OF SALE OR MONEY SEIZED

DIVISION I

BAILIFF'S REPORT

762. The bailiff files a report with the court clerk within 15 days of the sale or of the seizure of money, attaching any supporting documents, including any previously obtained valuation, the confirmation of the brokerage firm in charge of the sale of securities or security entitlements listed and traded on a recognized stock exchange, or the statement certified by the registrar.

The report must set out the names and contact information of the debtor, the seizing creditor, and, if a sale has occurred, the purchaser, and the terms of the sale. It must refer to the minutes of seizure and any publications made, as applicable, mention any opposition filed, and specify the sum collected and the name of the person in whose hands it is seized. If two or more persons are entitled to the proceeds of the sale or the money seized, it must also include a collocation scheme.

763. For the preparation of the report, the bailiff can summon a creditor to be examined on facts relating to a charge mentioned in the statement certified by the registrar or a claim filed in the record.

An admission by the person in whose favour a charge is registered or a claim lies has full effect against the person without any further proceeding or formality.

764. The bailiff's report, including the collocation scheme, is verified by the court clerk, and, if certified by the latter, notified to the debtor, to the creditors entitled to the proceeds of the sale or the money seized, to the creditors who entered their addresses in the land register or the register of personal and movable real rights, and, in the case of an immovable, to the municipality and the school board in whose territory the immovable is located.

DIVISION II

COLLOCATION SCHEME

765. The collocation scheme sets out the names and contact information of the creditors, the nature of each creditor's claim, the date of the title and of its registration, if applicable, and the amount to which each creditor is entitled. It specifies, for each claim, whether it pertains to the whole amount to be distributed or only to the proceeds of the sale of a particular item of property or of part of an item of property.

The scheme determines the order of collocation according to the rank of the creditors, as follows:

- (1) execution costs, in the following order:
 - the cost of the bailiff's report;
 - the cost of the sale;
 - the cost of the seizure, including the cost of any post-judgment examination, and costs relating to the transportation and custody of the property;
 - the fee and other costs of the bailiff;
 - the cost of incidental proceedings subsequent to the judgment; and
 - the legal costs, if any, of the seizing creditor;
- (2) prior claims against the property sold;
- (3) hypothecary claims against the property sold;
- (4) the claim of the seizing creditor representing 10% of the money to be distributed to other creditors of the same rank; and
- (5) claims of unsecured creditors.

If an opposition to the seizure was filed tardily and was allowed only after the sale, the bailiff enters in the collocation scheme the claim of the person having revendicated the property or the person holding a real right in the property, according to their rank.

766. If there are indeterminate or unliquidated claims, the bailiff must reserve a sum sufficient to cover them out of the available moneys. The sum must be held in a trust account until the claims are determined or liquidated, unless a judge orders otherwise.

If there are conditional claims, the creditors are collocated according to their rank, but the amount of their claims is paid to subsequent creditors whose claims are payable, upon security being given, within the month following notification of the bailiff's report and the collocation scheme, for the return of the money when the condition is fulfilled. If the subsequent creditors fail to give security, or if there are no subsequent creditors, the amount is paid to the debtor, on condition of security being given, or, if the debtor fails to give security, to the conditional creditors, upon their giving security for the return of the money in the event that the condition fails or becomes impossible, and paying interest to the bailiff. The bailiff distributes the interest to the creditors or remits it to the debtor after satisfying the creditors.

767. If two or more things separately charged with different claims are sold for one and the same price or if a creditor has a claim upon part only of a thing by reason of improvements or another cause, the bailiff apportions the amount

to be distributed if it is insufficient, and obtains an expert opinion if the record does not contain sufficient information. The share to be attributed to each creditor is determined by valuating the different things or parts in relation to the value of the whole.

768. The bailiff, on his or her own initiative or on the request of an interested person, can correct the collocation scheme if it contains an error. In that case the bailiff must notify the corrected collocation scheme.

769. Within 10 days after notification of the bailiff's report or the corrected collocation scheme, any interested person can contest the scheme and ask the court for a determination of the persons to whom the proceeds of the sale and the money seized are to be distributed.

The demand is notified to the bailiff and to all those who received the bailiff's report. On such notification, the bailiff stays the distribution proceeding either entirely or only with respect to the contested claim and subsequent claims, as applicable.

770. If there is no contestation or as soon as a judgment is rendered dismissing the contestation, the bailiff distributes the proceeds of the sale and the money seized without delay as provided in the bailiff's report.

CHAPTER III

DISTRIBUTION OF SEIZED INCOME

771. Periodically seized or collected income must be distributed to the creditors by the bailiff or the court clerk at least quarterly, but at least monthly in the case of a creditor of support.

772. While a seizure of income remains binding, not only the seizing creditor but all creditors can participate in the distribution of the income. However, they must first notify their claim, setting out the nature, date and amount of the debt, to the bailiff or the court clerk and to all interested persons, and provide supporting documents.

In the absence of supporting documents, the claim is null, unless it is established to the satisfaction of the court that it is impossible for the creditor to produce them.

773. From the date of filing, a claim bears interest at the legal rate only. No claim relating to the difference between the rate of interest agreed between the parties and the legal rate, for any period during which the legal rate is applicable, can be accepted.

774. Any interested party can contest the claim of a creditor by notifying the contestation to the bailiff or the court clerk, the debtor and the creditor. On such notification, the bailiff stays the distribution of seized income to the

creditor and retains the amounts otherwise payable to the latter until a decision is made on the contestation.

775. The bailiff distributes seized income according to the following order of collocation:

(1) execution costs, including the cost of administering an instalment payment agreement;

(2) claims for support and claims resulting from a judgment ordering the payment of damages for bodily injury caused by an intentional or gross fault, but only with respect to the difference between the portion of the income seized by reason of the particular nature of the claim and the portion of income that is ordinarily seizable, in proportion to the amount of the claims;

(3) prior claims;

(4) the claim of the seizing creditor representing 10% of the money to be distributed to other creditors of the same rank; and

(5) claims of unsecured creditors, including the claims mentioned in subparagraphs 2 and 4, in proportion to the amount of the claims.

In all cases, the bailiff pays to a creditor of support, out of the portion of income that is ordinarily seizable, the amount required to make the total money distributed to that creditor equal to at least one-half of the amount distributed every month, up to the amount of support due.

However, a claim by a spouse based on a marriage or civil union contract cannot be paid until all other claims have been discharged.

GENERAL AMENDING PROVISIONS

776. In any Act or statutory instrument, the concepts of the Code of Civil Procedure are replaced by the corresponding concepts of the new Code. The following replacements are made, with the necessary adaptations, including as to grammar and syntax:

(1) “writ of subpoena” and the noun “summons” are replaced by “subpoena”;

(2) “certified mail”, “certified letter” and “registered letter” are replaced by “registered mail”;

(3) “extra-judicial professional fees” and “extrajudicial fees” are replaced by “fees” and any references to “judicial fees” are struck out;

(4) “juridical day” is replaced by “working day”;

(5) “non-juridical day” is replaced by “holiday” with the addition, as required by the context, of “Saturdays, 26 December and 2 January”;

(6) “jurisdiction” in the French text, when referring to the jurisdiction of a court of justice or an administrative tribunal, is replaced by “compétence”;

(7) “mandate given in the anticipation of the mandator’s incapacity” or the equivalent is replaced by “protection mandate”;

(8) “generally accepted accounting principles” or the equivalent is replaced by “generally accepted accounting standards”;

(9) “recours collectif” in the French text is replaced by “action collective”;

(10) “extraordinary recourse” and “extraordinary remedy” and any reference to a direct action in nullity as well as any reference to articles 834 to 846 of the former Code are replaced by “application for judicial review”;

(11) “règles de pratique” in the French text, when referring to a court or an administrative tribunal, is replaced by “règlements du tribunal”; and

(12) “service” is replaced by “notification” except when referring to notification by a bailiff, notification of an originating demand or equivalent instrument, or personal notification or notification in person or by personal delivery, and in instances where a person could lose a right or incur a penalty other than a procedural penalty if the person does not act within a specific time limit.

SPECIFIC AMENDING PROVISIONS

CIVIL CODE OF QUÉBEC

777. Article 978 of the Civil Code of Québec is amended by replacing the third paragraph by the following paragraph:

“The boundary determination report is registered in the land register on the joint application of the owners concerned and transfers ownership on being so registered.”

778. Article 1731 of the Code is amended by replacing “La vente faite sous l’autorité de la justice” in the French text by “La vente sous contrôle de justice”.

779. Article 1758 of the Code is replaced by the following article:

“1758. A sale by auction is either voluntary or forced; an auction sale under judicial authority is conducted as specified in the notice of sale entered

in the execution register and in accordance with the rules of the Code of Civil Procedure and of this subsection, so far as they are consistent.”

780. The heading of Section IV of Chapter IX of Title II of Book V of the Code is replaced by the following heading:

“SPECIAL RULES GOVERNING PROTECTION MANDATES”.

781. Article 2166 of the Code is amended by replacing “A mandate given” and “his property is made” in the first paragraph by “A protection mandate is a mandate given” and “his property; it is made”, respectively.

782. Article 2648 of the Code is amended by replacing “The movable property of the debtor which furnishes his main residence, used by and necessary for the life of the household,” in the first paragraph by “The movable property of a debtor that furnishes or adorns the debtor’s main residence”.

783. Article 2791 of the Code is amended by replacing the portion before “fixes the conditions” by “A sale is conducted under judicial authority if the creditor, the debtor or a later ranking creditor so requests. The court appoints the bailiff who is to conduct the sale,”.

784. Article 2793 of the Code is amended by replacing “The person entrusted with” in the first paragraph by “The bailiff responsible for” and by replacing “The person” in the second paragraph by “The bailiff”.

785. Article 2794 of the Code is amended by striking out “in respect of the effect of the order to sell”.

ACT RESPECTING THE BARREAU DU QUÉBEC

786. The heading of Division XII of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) is replaced by the following heading:

“FEES AND COSTS”.

787. Section 125 of the Act is replaced by the following section:

“**125.** The fees charged for professional services rendered by an advocate belong to the advocate. However, if an advocate carries on his professional activities within a joint-stock company in accordance with the by-law adopted by the General Council under paragraph *p* of section 94 of the Professional Code (chapter C-26), the company is entitled to those fees.”

788. Section 126 of the Act is amended

- (1) by striking out “extrajudicial” in subsection 1;
- (2) by replacing “extrajudicial costs” in subsection 3 by “fees and costs”.

789. Section 127.1 of the Act is amended by replacing “his judicial and extra-judicial costs” by “his fees and costs”.

COURT BAILIFFS ACT

790. Section 8 of the Court Bailiffs Act (R.S.Q., chapter H-4.1) is amended by adding “, including preparing a certified report” at the end.

SPECIAL PROCEDURE ACT

791. The Special Procedure Act (R.S.Q., chapter P-27) is repealed.

ACT RESPECTING THE CLASS ACTION

792. The title of the Act respecting the class action (R.S.Q., chapter R-2.1) is replaced by the following title:

“Class Action Assistance Fund Act”.

793. The Act is amended by replacing “recours collectif” wherever it appears in the French text by “action collective”.

794. Section 20 of the Act is amended by adding the following paragraph at the end:

“However, no legal person established for a private interest, partnership or association other than a legal person governed by Part III of the Companies Act (chapter C-38), a cooperative governed by the Cooperatives Act (chapter C-67.2) or an association of employees within the meaning of the Labour Code (chapter C-27) may obtain financial assistance from the Fund to institute a class action.”

COURTS OF JUSTICE ACT

795. Section 12 of the Courts of Justice Act (R.S.Q., chapter T-16) is replaced by the following section:

“**12.** To ensure the proper dispatch of the business of the Court of Appeal, the Chief Justice or, in his absence, the senior puisne judge, may ask the Chief Justice of the Superior Court, in writing, to designate one or more judges of that court to sit in the Court of Appeal as judges ad hoc. A judge ad hoc shall have all the powers and duties of a puisne judge of the Court of Appeal.”

796. Section 146 of the Act is amended

(1) by replacing “règles de pratique” in the first paragraph in the French text by “règlements”;

(2) by replacing “règles par des règles particulières” in the second paragraph in the French text by “règlements par des règlement particuliers”;

(3) by adding the following paragraph at the end:

“However, the rules applicable in the Civil Division of the Court are adopted in accordance with the rules of the Code of Civil Procedure.”

797. Section 147 of the Act is amended

(1) by replacing “règles de pratique sont soumises” in the first paragraph in the French text by “règlements sont soumis”;

(2) by replacing the second paragraph by the following paragraph:

“They must also be made readily accessible to the public, including through posting on the courts’ website.”

TARIFF OF JUDICIAL FEES OF ADVOCATES

798. The Tariff of Judicial Fees of Advocates (R.R.Q., chapter B-1, r. 22) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

799. This new Code of Civil Procedure replaces the former Code of Civil Procedure adopted by chapter 80 of the statutes of 1965, as amended.

The rules of this new Code apply as soon as they come into force, subject to the following:

(1) in first instance, originating demands that have already been filed continue to be governed by the former Code as regards procedure prior to inscription for trial and judgment and the relevant time limits;

(2) cases that would be under the jurisdiction of a different court continue before the court already seized of the matter;

(3) in appeal, the time limits for preparing the appeal record continue to apply to cases already in appeal;

(4) until (*insert the date that occurs three years after the date of coming into force of Title II of Book VI*), Title II of Book VI of this new Code applies only to claims not exceeding \$10,000, excluding interest; and

(5) if already underway, the execution of a judgment, a decision or a juridical act that has the binding force of a judgment continues under the former Code.

800. This Act comes into force on the date to be set by the Government.

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