

chapter C-25.01

## CODE OF CIVIL PROCEDURE

### PRELIMINARY PROVISION

This Code establishes the principles of civil justice and, together with the Civil Code and in harmony with the Charter of the French language (chapter C-11), the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs procedure applicable to private dispute prevention and resolution processes when not otherwise determined by the parties, procedure before the courts as well as procedure for the execution of judgments and for judicial sales.

This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role. It is also designed 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 those involved in the administration of justice.

This Code must be interpreted and applied as a whole, in keeping with civil law tradition. The rules it sets out are to be interpreted in the light of the specific provisions it contains or of those of the law, and in the matters it deals with, the Code compensates for the silence of the other laws if the context so admits.

2014, c. 1, pream.; I.N. 2016-12-01; 2022, c. 14, s. 142.

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**SCHEDULE I**

**600.** The court determines the claim of each class member or orders the special clerk to determine it according to the procedure it establishes. The court may determine special methods of proof and procedure for such purpose.

2014, c. 1, a. 600.

**601.** At the trial of an individual claim, the defendant may urge against a claimant a preliminary exception that this Title did not earlier permit against the representative plaintiff.

2014, c. 1, a. 601.

## **DIVISION IV**

### **APPEAL**

**602.** The judgment on a class action may 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 may, within two months after the publication or notification of the judgment notice, apply to the Court of Appeal for permission to be substituted as representative plaintiff in order to appeal the judgment.

The time limit in this article is a strict time limit.

2014, c. 1, a. 602.

**603.** The appellant asks the court of first instance to determine the content of the notice to be given to class members.

2014, c. 1, a. 603.

**604.** If the Court of Appeal grants the representative plaintiff's appeal, even in part, it may order that the record be sent to the court of first instance for collective recovery of claims or for determination of individual claims.

2014, c. 1, a. 604.

## **BOOK VII**

### **PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES**

#### **TITLE I**

##### **MEDIATION**

#### **CHAPTER I**

##### **ROLES AND DUTIES OF PARTIES AND MEDIATOR**

**605.** A mediator is chosen, directly or through a third person, by mutual agreement of the parties.

The mediator helps the parties to engage in dialogue, clarify their views, define the issues in dispute, identify their needs and interests, explore solutions and reach, if possible, a mutually satisfactory agreement. The parties may ask the mediator to develop with them a proposal to prevent or resolve the dispute.

The mediator is required to draw the parties' attention to any conflict of interest or any situation that may be seen to create a conflict of interest or that may cast doubt on the mediator's impartiality.

2014, c. 1, a. 605.

**606.** The mediator and mediation participants cannot be compelled, in arbitration, administrative or judicial proceedings, whether related or unrelated to the dispute, to disclose anything they hear or learn in the course of the mediation process. Nor can the mediator and mediation participants be compelled to produce a document prepared or obtained in the course of the mediation process, unless the law requires its disclosure, a person's life, safety or personal integrity is at stake or its disclosure is necessary for the mediator to be able to defend against a claim of professional fault. No information given or statement made in the course of the mediation process may be admitted in evidence in such proceedings.

To claim the privilege of non-compellability, the mediator must be certified by a body recognized by the Minister of Justice. In addition, the mediator must be subject to rules of professional conduct and be required to take out civil liability insurance or provide some other form of security to cover injury to third persons.

2014, c. 1, a. 606; I.N. 2016-12-01.

**607.** Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the mediation record, or the right to object to the use of a document in the course of a mediation process on the grounds that it may contain personal information.

2014, c. 1, a. 607.

**607.1.** A court seized of a dispute on an issue on which the parties have entered into a mediation agreement may, on a party's application, refer the parties back to mediation, unless the court finds the agreement to be null. The application for referral to mediation must be made within 45 days after service of the originating application.

If mediation fails, the evidence exchanged between the parties may be filed in the court record by mutual agreement.

2023, c. 3, s. 17.

## CHAPTER II

### CONDUCT OF MEDIATION

**608.** Mediation begins, without formality, on the day on which the parties agree to enter into a mediation process by mutual agreement or at the initiative of one of them. In the latter case, failure by the other party to respond constitutes a refusal to participate in the mediation process.

2014, c. 1, a. 608.

**609.** Before starting the mediation process, the mediator informs the parties of a mediator's role and duties, and determines with them the rules applicable to and the length of the mediation process.

The parties must undertake to attend all meetings to which they are invited by the mediator. They may, if all consent, even tacitly, bring persons whose contribution may be useful for the orderly progress of the mediation process and helpful in resolving the dispute. The parties are required to ensure that the persons who have the authority to make a settlement agreement are present or that they can be reached in sufficient time to give their consent.

2014, c. 1, a. 609.

**610.** The mediator has a duty to treat the parties fairly, and must see that each party has an opportunity to argue its case.

The mediator may suspend the mediation process at any time, in the interests of the parties or of one of the parties.

2014, c. 1, a. 610.

**611.** The mediator may communicate with each party separately, but in that case is required to inform the parties.

No information relevant to the mediation received from a party may be disclosed by the mediator, without that party's consent, to the other party.

2014, c. 1, a. 611.

**612.** If the parties enter into mediation while a judicial application is already in progress, they must agree to a stay of the proceeding, provided the law or the court seized permits it, until the end of the mediation process.

2014, c. 1, a. 612.

### CHAPTER III

#### END OF MEDIATION

**613.** A settlement agreement contains the undertakings of the parties and terminates the dispute. The settlement agreement constitutes a transaction only if the subject matter and the circumstances permit and the parties' wishes in that respect are clear.

The mediator must see that the parties understand the agreement.

2014, c. 1, a. 613.

**614.** A party may withdraw from or put an end to the mediation process at any time at its own discretion and without being required to give reasons.

The mediator, too, may put an end to the mediation process if, in the mediator's opinion, it is warranted by the circumstances, in particular if the mediator is convinced that the mediation process is doomed to failure or is likely, if continued, to cause serious prejudice to one of the parties.

2014, c. 1, a. 614.

**615.** As soon as the mediation process ends, the mediator renders an account to the parties of the sums received and determines the costs, which are borne equally by the parties, unless a different apportionment has been agreed, or has been ordered by the court if the mediation process took place in the course of a proceeding.

The costs include the mediator's fee, travel expenses and other disbursements, as well as any costs related to expert evidence or other interventions agreed by the parties. All other expenses incurred by a party are borne by that party.

2014, c. 1, a. 615.

## CHAPTER IV

### SPECIAL PROVISIONS APPLICABLE TO FAMILY MEDIATION

**616.** Mediation of a family dispute that is entered into on a purely private basis or without a judicial application being brought may only be conducted by a family mediator certified in accordance with the regulations under article 619. If a child's interests are at stake, the mediator is required to inform the parties that they must participate in a parenting and mediation information session as provided in article 417.

2014, c. 1, a. 616.

**617.** Mediation sessions take place in the presence of both parties and a mediator or, if the parties so agree, two mediators. The sessions may also, if all agree, take place in the presence of a single party, in the presence of the child concerned or in the presence of other persons who are neither experts nor advisers if their contribution may be helpful in resolving the dispute.

If required by the circumstances, the mediator may, with the parties' consent, use any appropriate, readily available technological means.

When the mediation process 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.

2014, c. 1, a. 617.

**618.** If the mediator considers that a proposed settlement 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 is required to invite the parties to remedy the situation and, if necessary, to seek advice from a third person. If convinced that the possibility of prejudice cannot be eliminated, the mediator may put an end to the mediation process.

2014, c. 1, a. 618.

**619.** The Government designates the persons, bodies or associations that may certify family mediators and, by regulation, determines the standards with which those persons, bodies or associations must comply.

The Government, by regulation, may define the conditions mediators must satisfy to be certified and determine the standards with which certified mediators must comply in the exercise of their functions, as well as the sanctions applicable for non-compliance.

The Government, by regulation, may also determine what services are payable by the Family Mediation Service, set the tariff of professional fees the Service may pay certified family mediators and determine the time limit and procedure for claiming such professional fees and the applicable terms of payment. In addition, it may determine the tariff of professional fees the parties may be charged for services not covered 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 may be used by the Family Mediation Service, and specifies other services the Service may provide as well as the applicable conditions.

2014, c. 1, a. 619.

## TITLE II

### ARBITRATION

#### CHAPTER I

##### GENERAL PROVISIONS

**620.** Arbitration is the submission of a dispute to an arbitrator for a decision in accordance with the rules of law and, if appropriate, for a determination of damages. The arbitrator may act as *amiable compositeur* if the parties have so agreed. In all instances, the arbitrator decides the dispute in accordance with the stipulations of the contract between the parties and takes into account any applicable usages.

The arbitrator's mission also includes attempting to reconcile the parties, if they so request and circumstances permit, and continuing the arbitration process, with the parties' express consent, if the conciliation attempt fails.

2014, c. 1, a. 620.

**621.** Arbitrators cannot be prosecuted for an act performed in the course of their arbitration mission, unless they acted in bad faith or committed an intentional or gross fault.

2014, c. 1, a. 621.

**622.** Unless otherwise provided by law, the issues on which the parties have an arbitration agreement cannot be brought before a court even though it would have jurisdiction to decide the subject matter of the dispute.

A court seized of a dispute on such an issue is required, on a party's application, to refer the parties back to arbitration, unless the court finds the arbitration agreement to be null. The application for referral to arbitration must be made within 45 days after service of the originating application or within 90 days when the dispute involves a foreign element. Arbitration proceedings may be commenced or continued and an award made for so long as the court has not made its ruling.

The parties cannot, through their agreement, depart from the provisions of this Title that determine the jurisdiction of the court or from those relating to the application of the adversarial principle or the principle of proportionality, to the right to receive notification of a document or to the homologation or the annulment of an arbitration award.

2014, c. 1, a. 622; 2023, c. 3, s. 18.

**623.** The court, on an application, may grant provisional measures or safeguard orders before or during arbitration proceedings.

2014, c. 1, a. 623.

#### CHAPTER II

##### APPOINTMENT OF ARBITRATORS

**624.** The parties appoint an arbitrator to decide their dispute. They do so by mutual agreement, unless they ask a third person to make the appointment.

The parties may choose to appoint a panel of arbitrators, in which case each party appoints one arbitrator, and the two so appointed appoint the third.

If an arbitrator must be replaced, the procedure for the appointment of an arbitrator applies.

2014, c. 1, a. 624.

**625.** If the appointment of an arbitrator proves difficult, the court, on a party's request, may take any necessary measure to see to the appointment.

For example, if a party fails to appoint an arbitrator within 30 days after having been required by another party to do so, the court may make the appointment. As well, the court may appoint an arbitrator if, 30 days after two arbitrators are appointed, they cannot agree on the choice of the third arbitrator.

2014, c. 1, a. 625.

**626.** An arbitrator may be recused if there is serious reason to question their impartiality or if the arbitrator does not have the qualifications agreed by the parties.

An arbitrator is required to declare to the parties any fact that could cast doubt on the arbitrator's impartiality and justify a recusal.

2014, c. 1, a. 626.

**627.** A party may ask for an arbitrator's recusal by notifying a document stating its reasons to the other party, to the arbitrator concerned and, if applicable, to the other arbitrators, within 15 days after becoming aware of the appointment or appointments or of the cause for recusal.

A party may only ask for the recusal of an arbitrator it appointed for a cause which arose or was discovered after the appointment was made.

The arbitrator or arbitrators are required to rule on the recusal request without delay, unless the arbitrator concerned withdraws or, the other party supporting the request, is compelled to withdraw.

If the recusal cannot be so obtained, a party may, within 30 days after being advised of it, ask the court to rule on the recusal. The arbitrator concerned and, if there are more than one, the other arbitrators, may nonetheless continue the arbitration proceedings and make an award for so long as the court has not made its ruling.

2014, c. 1, a. 627.

**628.** A party may ask the court to revoke an arbitrator if it is impossible for the arbitrator to carry out their mission or if the arbitrator does not discharge their functions within a reasonable time.

2014, c. 1, a. 628.

**629.** If the procedure provided for in the arbitration agreement for the recusal or revocation of an arbitrator proves difficult to implement, the court may, on a party's request, rule on the matter.

2014, c. 1, a. 629.

**630.** Decisions of the court on appointment, recusal or revocation cannot be appealed.

2014, c. 1, a. 630.

## CHAPTER III

### CONDUCT OF ARBITRATION

**631.** Arbitration proceedings commence on the date of notification of one party to the other of a notice stating that it is submitting a dispute to arbitration and specifying the subject matter of the dispute.

The notice, like any other document that is required to be notified, is notified in accordance with this Code.  
2014, c. 1, a. 631.

**632.** Arbitrators conduct the arbitration according to the procedure they determine; they are required, however, to see that the adversarial principle and the principle of proportionality are observed.

Arbitrators have all the necessary powers to exercise their jurisdiction, including the power to administer oaths, the power to appoint an expert and the power to rule on their own jurisdiction.

If an arbitrator rules on the arbitrator's own jurisdiction, a party, within 30 days after being advised of the decision, may ask the court to rule on the matter. A decision of the court recognizing the jurisdiction of the arbitrator cannot be appealed.

For so long as the court has not made its ruling, the arbitrator may continue the arbitration proceedings and make an award.

2014, c. 1, a. 632.

**633.** Arbitration proceedings are conducted orally, at a hearing, unless the parties agree on the matter being decided on the face of the record. In either case, a party may state its case in writing.

The arbitrator may require each party to send the arbitrator, within a specified time, a statement of its contentions and any exhibits mentioned, and to send them to the other party, if not already done. Any expert reports and other documents on which the arbitrator may base the arbitration award must also be sent to the parties.

The arbitrator advises the parties of the date of the hearing and, if applicable, of the date on which the arbitrator will inspect the property or visit the premises.

Witnesses are called, heard and indemnified according to the rules applicable to a trial before a court.

2014, c. 1, a. 633; I.N. 2016-12-01.

**634.** The arbitrator, or a party with leave of the arbitrator, may request the assistance of the court to obtain evidence, including to compel a witness who refuses, without valid reason, to attend, answer or produce real evidence in their possession.

2014, c. 1, a. 634.

**635.** If a party fails to state its contentions, attend at the hearing or present evidence in support of its contentions, the arbitrator, after recording the default, may continue the arbitration.

However, if the party that submitted the dispute to arbitration fails to state its contentions, the arbitration is ended unless the other party objects.

2014, c. 1, a. 635.

**636.** Decisions during arbitration proceedings are made immediately or, if they cannot be made immediately, as soon as possible; if they are in writing, they must be signed, as must the arbitration award.

If more than one arbitrator has been appointed, decisions are made by a majority of the panel. However, an arbitrator may rule alone on a question of procedure if so authorized by the parties or by all the other arbitrators.

2014, c. 1, a. 636.

**637.** The parties, subject to their agreement or unless the arbitrator decides otherwise, are equally liable for the arbitrator's professional fee and expenses.

2014, c. 1, a. 637.

## CHAPTER IV

### EXCEPTIONAL MEASURES

**638.** The arbitrator may, on a party's request, take any provisional measure or any measure to safeguard the parties' rights for the time and subject to the conditions the arbitrator determines and, if necessary, require that a suretyship be provided to cover costs and the reparation of any prejudice that may result from such a measure. Such a decision is binding on the parties but one of them may, if necessary, ask the court to homologate the decision to give it the same force and effect as a judgment of the court.

2014, c. 1, a. 638.

**639.** In an urgent situation, even before a request for a provisional or safeguard measure is notified to the other party, the arbitrator may issue a provisional order for a period which may in no case exceed 20 days. The arbitrator requires the party that requested the order to provide a suretyship unless, in the arbitrator's opinion, it is inappropriate or of no use.

The provisional order must be notified to the other party as soon as it is issued, with all the evidence attached. It is binding on the parties and cannot be homologated by the court.

2014, c. 1, a. 639.

**640.** The parties must disclose to the arbitrator without delay any material change in the circumstances based on which a provisional or safeguard measure or a provisional order was requested or granted.

The arbitrator may amend, stay or revoke a provisional or safeguard measure or a provisional order on the parties' request. In exceptional circumstances, the arbitrator may do so on the arbitrator's own initiative but must, in compliance with the adversarial principle, invite the parties to make representations.

2014, c. 1, a. 640.

**641.** If the arbitrator subsequently decides that a provisional or safeguard measure or a provisional order should not have been granted, the party that obtained the measure or order may be required to provide reparation for any prejudice caused to another party by the measure or order and to reimburse the costs incurred by that other party. The arbitrator may award such reparation and costs at any time during the arbitration proceedings.

2014, c. 1, a. 641.

## CHAPTER V

### ARBITRATION AWARD

**642.** The arbitration award is binding on the parties. It must be made in writing and be signed by the arbitrator or arbitrators, and include reasons. It must state its date and the place where it was made. The award is deemed to have been made on that date and at that place.

In arbitration proceedings with more than one arbitrator, the arbitration award must be made by a majority of the panel. 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.

The arbitration award must be made within three months after the matter is taken under advisement, but the parties may, more than once, agree to extend the time limit or, if it is expired, set a new one. In the absence of an agreement, the court may do as much, on a party's or the arbitrator's request. The decision of the court cannot be appealed.

If the parties settle the dispute, the agreement is recorded in an arbitration award.

The arbitration award is notified without delay to each party.

2014, c. 1, a. 642.

**643.** The arbitrator, on their own initiative, may correct any error in writing or calculation or any other clerical error in the arbitration award within 30 days after the award date.

Within 30 days after receiving the award, a party may ask the arbitrator to correct any clerical error or ask for a supplemental award on a part of the dispute that was not dealt with in the award or, with the other party's consent, for an interpretation of a specific passage of the award, in which case the interpretation forms an integral part of the award.

The decision correcting, supplementing or interpreting the arbitration award must be made within two months after it is requested. The rules applicable to the arbitration award apply to such a decision. If the decision is not rendered before the expiry of the prescribed time, a party may ask the court to issue an order to safeguard the parties' rights. The decision of the court cannot be appealed.

2014, c. 1, a. 643; I.N. 2016-12-01.

**644.** The arbitrator is required to preserve the confidentiality of the arbitration process and protect deliberative secrecy but violates neither by stating conclusions and reasons in the award.

2014, c. 1, a. 644.

## CHAPTER VI

### HOMOLOGATION

**645.** A party may apply to the court for the homologation of an arbitration award. As soon as it is homologated, the award acquires the force and effect of a judgment of the court.

The court seized of an application for the homologation of an arbitration award cannot review the merits of the dispute. It may stay its decision if the arbitrator has been asked to correct, supplement or interpret the award. In such a case, if the applicant so requires, the court may order a party to provide a suretyship.

2014, c. 1, a. 645.

**646.** The court cannot refuse to homologate an arbitration award or a provisional or safeguard measure unless it is proved that

- (1) one of the parties did not have the capacity to enter into the arbitration agreement;
- (2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under Québec law;
- (3) the procedure for the appointment of an arbitrator or the applicable arbitration procedure was not observed;

(4) the party against which the award or measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case; or

(5) the award pertains to 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 which case only the irregular provision is not homologated if it can be dissociated from the rest.

The court cannot refuse to homologate the arbitration award on its own initiative unless it notes that the subject matter of the dispute is not one that may be settled by arbitration in Québec or that the award or measure is contrary to public order.

2014, c. 1, a. 646.

**647.** The court seized of an application for the homologation of a provisional or safeguard measure may deny the application if the arbitrator's decision to require a suretyship has not been complied with or the measure has been revoked or stayed by the arbitrator.

The court may order the applicant to provide a suretyship if the arbitrator has not already ruled on that subject or if such a decision is necessary to protect the rights of third persons.

2014, c. 1, a. 647.

## CHAPTER VII

### ANNULMENT OF ARBITRATION AWARD

**648.** An arbitration award may only be challenged by way of an application for its annulment. Such an application is subject to the same rules as those governing an application for the homologation of an arbitration award, with the necessary modifications.

Whether it constitutes an originating application or is presented to contest an application for homologation, the application for annulment must be presented within three months after receipt of the arbitration award or of the decision on the request for a correction, a supplemental award or an interpretation. This is a strict time limit.

The court, on request, may stay the application for annulment for the time it considers necessary to allow the arbitrator to take such action as will eliminate the grounds for annulment, even if the time prescribed for correcting, supplementing or interpreting the award has expired.

2014, c. 1, a. 648; I.N. 2016-12-01.

## CHAPTER VIII

### SPECIAL PROVISIONS APPLICABLE TO INTERNATIONAL COMMERCIAL ARBITRATION

**649.** If international trade interests, including interprovincial trade interests, are involved in arbitration proceedings, 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 documents related to that Model Law, including

(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.

2014, c. 1, a. 649.

**650.** International trade interests are considered to be involved in arbitration proceedings if, among other possibilities, 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. Such interests are also considered to be involved in arbitration proceedings 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 State.

2014, c. 1, a. 650.

**651.** The arbitrator decides the dispute in accordance with the rules of law chosen by the parties or, failing any such designation, in accordance with the rules of law the arbitrator considers appropriate.

2014, c. 1, a. 651.

## CHAPTER IX

### RECOGNITION AND ENFORCEMENT OF ARBITRATION AWARDS MADE OUTSIDE QUÉBEC

**652.** An arbitration award made outside Québec, whether or not confirmed by a competent authority, may be recognized and declared to have the same force and effect as a judgment of the court if the subject matter of the dispute is one which could be submitted to arbitration in Québec and if recognition and enforcement of the award are not contrary to public order. The same applies for a provisional or safeguard measure.

The application for recognition and enforcement must be accompanied by the arbitration award or measure concerned and the arbitration agreement and by a translation certified in Québec of those documents if they are drawn up in a language other than French or English. The translation must be in French if the party presenting the application is a legal person.

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.

2014, c. 1, a. 652; 2022, c. 14, s. 145.

**653.** The court examining an application for recognition and enforcement of an arbitration award or a provisional or safeguard measure cannot review the merits of the dispute.

A party against which an award or a measure is invoked cannot oppose its recognition and enforcement unless the party proves that

(1) one of the parties did not have the capacity to enter into the arbitration agreement;

(2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under the law of the place where the award was made or the measure decided;

(3) the procedure for the appointment of an 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 proceedings were held;

(4) the party against which the award or the measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case;

(5) the award pertains to 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 which case only the irregular provision is not recognized and declared enforceable if it can be dissociated from the rest; or

(6) the award or measure has not yet become binding on the parties or has been annulled or stayed by a competent authority of the place where or under whose law the arbitration award was made or the measure decided.

The court may also deny an application for recognition and enforcement of a provisional or safeguard measure if the arbitrator's decision to require a suretyship was not complied with, if the measure was revoked or stayed by the arbitrator or if the measure is incompatible with the powers conferred on the court unless, in the latter case, the court decides to reformulate the provisional measure to adapt it to its own powers and procedures without modifying its substance.

2014, c. 1, a. 653.

**654.** The court may stay its decision in respect of the recognition and enforcement of an arbitration award if an application for the annulment or suspension of the award is pending before the competent authority of the place where or under whose law the arbitration award was made.

If the court stays its decision, it may, on the request of the party applying for recognition and enforcement of the award, order the other party to provide a suretyship.

2014, c. 1, a. 654.

**655.** The court may order the party applying for recognition and enforcement of a provisional or safeguard measure to provide a suretyship if the arbitrator has not already ruled on that subject or if such a decision is necessary to protect the rights of third persons.

2014, c. 1, a. 655.

## **BOOK VIII**

### **EXECUTION OF JUDGMENTS**

#### **TITLE I**

##### **PRINCIPLES AND GENERAL RULES**

#### **CHAPTER I**

##### **GENERAL PROVISIONS**

**656.** Judgments, including decisions of an administrative tribunal or a public body filed with the court office and juridical acts on which the law confers the force and effect of a judgment, are executed voluntarily by the payment of money, the surrender of property or the performance of what is ordered, either before the expiry of the time limits prescribed by law or within the time limit set out in the judgment or agreed between the parties.

Execution may be forced if the debtor refuses to comply voluntarily and the judgment has become final. However, in the case of a judgment under Title II of Book VI, execution may be forced only after the expiry of 30 days since it was rendered or, in the case of a default judgment following failure to answer the

summons, attend a case management conference or defend on the merits, after the expiry of 10 days since it was rendered.

A judgment that has yet to become final may be executed if provisional execution is permitted by law or ordered by the court.

2014, c. 1, a. 656.

**657.** After the judgment, the court may issue any order to facilitate execution, whether forced or voluntary, in the manner that is most advantageous for the parties and most consistent with their interests.

2014, c. 1, a. 657.

**658.** 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.

The bailiff may, in the course of executing a judgment, ask the court for any instruction the bailiff needs in order to act.

2014, c. 1, a. 658.

**659.** Any application, contestation or opposition with respect to execution is presented as if it were an application in the course of a proceeding. It is heard and decided without delay. It is presented without formality if the judgment was rendered under Title II of Book VI. In such a case, the rules of representation applicable under that Title also apply with respect to execution.

The application, contestation or opposition is presented in the district of the court that rendered the judgment. However, a bailiff applying for an authorization or presenting any other incidental application to the court or to the court clerk may do so in the district of the place where the execution proceedings are to be carried out.

When execution proceedings concern two or more judgments, the application, contestation or opposition is presented before the court that rendered the judgment which gave rise to the initial notice of execution, but if the judgments were rendered at different jurisdictional levels, it is presented before the Court of Québec or, if the execution proceedings concern a judgment of the Superior Court, before the Superior Court.

2014, c. 1, a. 659.

## CHAPTER II

### PROVISIONAL EXECUTION

**660.** A judgment is provisionally executed as of right, if it

(1) concerns support payments or a support provision, determines arrangements regarding the custody of children or adjudicates on parental authority;

(2) orders a child's return under the Act respecting the civil aspects of international and interprovincial child abduction (chapter A-23.01);

(3) appoints, removes or replaces a tutor, temporary representative or other administrator of the property of others, or homologates or revokes a protection mandate;

(4) orders urgent repairs;

(5) orders an eviction in the absence of a lease or after the lease has expired or been resiliated or cancelled;

- (6) orders a rendering of account or an inventory;
- (7) orders any measure for the liquidation of a succession;
- (8) adjudicates on the possession of property;
- (9) adjudicates on the sequestration of property;
- (10) adjudicates on an abuse of procedure;
- (11) orders a provision for costs; or
- (12) rules on legal costs, but only with respect to the portion not exceeding \$15,000.

The judge may order the stay of provisional execution by a decision giving reasons. A judge of the Court of Appeal may also do so, or may lift a stay ordered by the judge of first instance.

2014, c. 1, a. 660; I.N. 2016-12-01; 2020, c. 11, s. 115.

**661.** If bringing an appeal is likely to cause serious or irreparable prejudice to one of the parties, the judge may, on an application, order provisional execution, even for part only of the judgment. The judge may also make provisional execution conditional on a surety being furnished.

If provisional execution is not 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 may also stay or lift provisional execution if it has been ordered, or order that a suretyship be provided by a party that was exempted from doing so by the court of first instance.

2014, c. 1, a. 661.

## CHAPTER III

### VOLUNTARY EXECUTION

#### DIVISION I

##### PAYMENT

###### § 1. — *General rule*

**662.** A judgment ordering a party to pay a sum of money is executed voluntarily by payment of the sum within the time limit and in the manner determined by the judgment or agreed between the parties.

2014, c. 1, a. 662.

###### § 2. — *Payment in instalments*

**663.** Payment in instalments is a manner 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 may, at any time, waive the benefit of paying in instalments by discharging the balance.

The instalment payment agreement, whether made before or after the filing of the notice of execution, is filed with the court office, in the record concerned, as is any waiver of that method of payment or any notice

stating that the debtor has lost the benefit of the term. The agreement ends without notice as soon as another creditor seeks execution of a judgment rendered in their favour.

2014, c. 1, a. 663.

§ 3. — *Voluntary deposit*

**664.** Voluntary deposit is a manner of execution by which the debtor undertakes by means of a declaration, which is deemed sworn, to make regular payments to the office of the Court of Québec, in an amount which cannot be less than the seizable portion of their income, and to declare any change in their situation to the court clerk.

The declaration is registered with the court office. In addition to the debtor's contact information and statement as to income, family responsibilities and creditors, it contains a determination of the amount payable and the terms of payment, and specifies the supporting documents the debtor must provide.

The debtor must inform the court office of any change in the information contained in the debtor's declaration within 10 days after the change occurs. The debtor must also update the information yearly.

2014, c. 1, a. 664.

**665.** A debtor is exempt from seizure so long as the voluntary deposit undertaking is complied with: creditors can neither seize the debtor's property nor sue the debtor. Prescription of their right of action against the debtor is suspended.

In the event of failure to comply with the voluntary deposit undertaking, the debtor has 30 days to remedy the situation counting from notification of a notice from the court clerk directing the debtor to do so. If in default, the debtor loses the benefit of voluntary deposit unless there is a serious reason for the default, in which case the court clerk may grant the debtor a maximum additional extension of 30 days.

The debtor may, at any time, waive the benefit of voluntary deposit by means of a notice notified to the court clerk.

Should the debtor lose or waive the benefit of voluntary deposit, the court clerk informs the creditors and, if applicable, the bailiff.

2014, c. 1, a. 665.

**666.** The court clerk notifies the debtor's declaration to the creditors named in it, at no cost to the debtor, and invites them, for the purpose of participating in the distribution, to file their claim with the court office and make any representations they may have. The court clerk gives the list of declared creditors to any creditor who requests it. The court clerk also notifies to the creditors any declaration of a change in the debtor's situation.

Creditors are required to file their claim, which is deemed to be a sworn claim, within 30 days after the notification. The claim must set out the nature, date and amount of the debt and be filed with supporting documents. It is deemed, for the purpose of computing interest, to have been notified on the date of the debtor's initial or subsequent declaration.

A creditor who delays in notifying their claim or in filing supporting documents is only entitled, until the delay is remedied, to the amount determined according to the debtor's declaration.

2014, c. 1, a. 666.

**667.** A creditor or any other interested person may contest the debtor's declaration within 15 days after becoming aware of it. The contestation must be notified to the debtor, the court clerk and the bailiff, if applicable.

2014, c. 1, a. 667.

**668.** The court clerk distributes the sums collected according to the provisions on distributing seized income. The court costs and fees are included in the execution costs.

2014, c. 1, a. 668.

**669.** A deduction notice or payment order sent in accordance with the Act to facilitate the payment of support (chapter P-2.2) and a seizure under that Act remain effective even if the support debtor resorts to voluntary deposit. The amount deducted at source, paid or seized under that Act is subtracted from the amount to be deposited with the court clerk.

2014, c. 1, a. 669.

**670.** If a contracting party, an employer or another third person substantially changes or ends a contractual relationship with the debtor, the onus is on them, under pain of damages, to prove that they did not do so because the debtor resorted to voluntary deposit.

2014, c. 1, a. 670.

## **DIVISION II**

### **SURRENDER**

**671.** A judgment which orders the handing over 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 may take possession of it. However, the judgment may provide for another method of surrender.

2014, c. 1, a. 671.

## **DIVISION III**

### **SURETYSHIP**

**672.** A judgment requiring a suretyship to be provided sets the amount of the surety's liability and the time within which the surety is to be presented.

2014, c. 1, a. 672.

**673.** The judgment is executed by filing with the court office a notice presenting the surety, or stating the intention of the person required to provide a suretyship to instead provide other sufficient security and specifying the nature of that security.

By undertaking to act as surety, the surety, whose name and contact information are stated in the notice, agrees to show solvency, to provide information on guarantees and on property owned, and to produce the related titles.

The surety or the other security may be contested for not meeting the requirements prescribed by law or for insufficiency of the amount or guarantee offered.

2014, c. 1, a. 673.

**674.** If the surety is accepted, the suretyship agreement is filed with the court office and subsists despite a revocation of judgment or an appeal.

2014, c. 1, a. 674.

## **DIVISION IV**

### **RENDERING OF ACCOUNT**

**675.** A judgment ordering a rendering of account is executed by notifying the account and supporting documents, within the time set by the judgment, to the party that required the rendering of account. On such notification, the accounting party and its agent may be examined on any fact relating to the account, or be required to hand over any relevant document.

2014, c. 1, a. 675.

**676.** 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.

2014, c. 1, a. 676.

**677.** The account is deemed to have been admitted if the party that required it has not contested it within 15 days after notification. Any remaining balance is then due.

The party may obtain and execute judgment for the remaining balance, without prejudice to its right to contest the remainder of the account. If the party contests it, the party files its grounds and their justification. The grounds are deemed valid if, within 10 days after 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 on the contestation must determine the precise balance of the account.

2014, c. 1, a. 677.

**678.** Failing voluntary execution, the party that required the rendering of account may prepare the account and have it set down for judgment. In that case, the party required to account cannot debate the account but may cross-examine the witnesses.

2014, c. 1, a. 678.

## **CHAPTER IV**

### **FORCED EXECUTION**

#### **DIVISION I**

##### **GENERAL RULES**

**679.** Forced execution is undertaken by the judgment creditor if the debtor does not execute the judgment voluntarily.

2014, c. 1, a. 679.

**680.** A creditor who wishes to force execution of a judgment gives execution instructions to a bailiff.

The instructions direct the bailiff to seize the debtor's property, including the debtor's income, and to dispose of it so as to satisfy the claim; they may also direct the bailiff to place the seizing creditor in

possession of an item 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 sends to the bailiff, together with the instructions, the money necessary for the execution of the judgment.

2014, c. 1, a. 680.

**681.** Execution begins by the filing of a notice of execution, in keeping with the model established by the Minister of Justice, with the court office.

On receiving the creditor's instructions, the bailiff completes the notice of execution by identifying the judgment to be executed, including its date, by writing in the name and contact information of the creditor, the debtor and the bailiff, and the amount of the claim, indicating, if such is the case, that the judgment has been partially executed, and by describing the execution measures to be taken. If the judgment is to be executed against an immovable, the immovable is described in accordance with the rules of the Civil Code, and its address is given.

The notice is served on the debtor and notified to the creditor.

2014, c. 1, a. 681.

**682.** All execution measures are set out in a single notice of execution. The notice may 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 is required, as seisor, to join in the execution proceedings already commenced in the district where they were commenced. The new creditor gives instructions to the executing bailiff.

The bailiff files with the court office, in each of the records concerned, an amended notice identifying any creditor joining in the execution proceedings, setting out the particulars of that creditor's claim and describing any additional execution measures considered expedient. The bailiff notifies the amended notice to the debtor and to the creditors who gave the bailiff instructions.

2014, c. 1, a. 682.

## DIVISION II

### RIGHTS AND OBLIGATIONS OF PARTICIPANTS IN EXECUTION PROCEEDINGS

#### § 1. — *General provisions*

**683.** On notification of a notice of execution, all participants in the execution proceedings are required, in addition to acting in accordance with the requirements of good faith, to co-operate in the proper execution of the judgment and abstain from doing anything likely to hinder it.

2014, c. 1, a. 683.

**684.** On being served with the notice of execution, the debtor is required to provide the bailiff with all the information needed to identify the debtor, including their date of birth, and information on their patrimonial situation, including a list of all creditors who could join in the execution proceedings in the course of the year, or who hold a hypothec on or have a right to revendicate the seized property.

On the bailiff's request, the court may order a person, a public officer or a public body to provide the bailiff with any information they have concerning 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.

2014, c. 1, a. 684.

§ 2. — *Bailiffs*

**685.** Bailiffs have a duty of impartiality toward all participants in execution proceedings, as well as a general duty to provide information to them. Bailiffs may perform any act necessary for the exercise of their mission.

Specifically, a bailiff is required to inform the debtor and any garnishees of the content of the notice of execution and of their rights, and, on their request, explain the execution proceedings to them and the rules for computing the seizable portion of income. The bailiff is also required to carry out the creditors' instructions in the manner that is most advantageous not only for them but for all the parties. The bailiff informs the creditors named in the list provided by the debtor that a notice of execution has been filed and invites them to inform the bailiff of the nature and amount of their claim.

Unless they acted in bad faith or committed an intentional or gross fault, bailiffs cannot be held liable for the exercise of functions that are assigned to them in forced execution matters and relate to an eviction, the removal of property or the seizure of the debtor's property or of a passenger vehicle or to a sale under judicial authority as the method of realization in execution of a judgment.

2014, c. 1, a. 685.

**686.** If force must be used to enter a place for the purpose of seizing or removing property or evicting a person, the bailiff, before entering, must obtain the authorization of the special clerk of the district where the bailiff must carry out the execution proceedings. This authorization gives the bailiff access to all rooms, buildings and things on the premises.

The bailiff, if concerned about possible difficulties, may request the assistance of a peace officer.

2014, c. 1, a. 686.

**687.** The bailiff has, with respect to seized property, the powers of an administrator of the property of others charged with simple administration.

All sums seized by the bailiff, paid to the bailiff under an instalment payment agreement or derived from the disposition of property are deposited in a trust account until distribution.

2014, c. 1, a. 687.

### **DIVISION III**

#### **POST-JUDGMENT EXAMINATION**

**688.** When a judgment has become enforceable, the judgment creditor or the bailiff may examine the debtor as to their income, obligations and debts, any sums owing to the debtor, any property the debtor owns or has owned since incurring the debt that is the basis for the judgment, and the property that is the subject of the judgment. During the examination, the debtor may be required to produce a document.

The creditor or the bailiff may also examine any other person who is in a position to provide information about the debtor's patrimony or any rights registered in the land register or the register of personal and

movable real rights. If the person does not consent to being examined, the creditor or the bailiff must obtain the authorization of the court to conduct the examination.

2014, c. 1, a. 688.

**689.** The creditor or the bailiff informs the person to be examined of the nature of the examination and agrees with the person on its time and place. If they cannot agree on these points, the person is called to attend at court on the date specified in a subpoena, which must be served at least five days before that date.

The person's deposition 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 must be submitted to the court as soon as possible for a decision.

2014, c. 1, a. 689.

## **DIVISION IV**

### **RULES APPLICABLE IN EVENT OF DEATH OR IN CASE OF INCAPACITY**

**690.** 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 may be executed in the creditor's name unless it orders the performance of something that is purely personal to the creditor.

2014, c. 1, a. 690.

**691.** A judgment rendered against the tutor of a minor, or the tutor or mandatary of a person of full age, in that capacity, cannot be executed against the minor or the person of full age, once they become capable of exercising their rights, until 10 days after it has been served on them.

A judgment rendered in favour of a representative may be executed in the representative's name, even after that person ceases to be a representative.

2014, c. 1, a. 691; 2020, c. 11, s. 254.

## **DIVISION V**

### **SPECIAL RULES APPLICABLE TO FORCED EXECUTION IN REAL ACTIONS**

**692.** If the 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 removal of property or by a subsequent agreement between the parties, the judgment creditor may be placed in possession of the property by the notice of execution.

If it involves eviction, the notice must be served at least five days before it is to be executed. It orders the debtor to remove all movable property within a specified time limit or pay the costs incurred for its removal and informs the debtor that if the debtor fails to comply, the movable property will be deemed to have been abandoned.

No eviction may be carried out on a holiday or during the period extending from 24 December to 2 January.

2014, c. 1, a. 692.

**693.** Any movable property left on the premises on eviction of the debtor is deemed to have been abandoned by the debtor and the bailiff may sell it for the benefit of the creditor, give it away to a charity if it is not likely to be sold or otherwise dispose of it as the bailiff sees fit if it cannot be given away.

2014, c. 1, a. 693.

## **DIVISION VI**

### **EXEMPTION FROM SEIZURE**

**694.** A debtor's movable property that furnishes or decorates the debtor's principal residence, that is for the family's use and is needed for the life of the family, up to a market value of \$7,000 as determined by the bailiff, and, if that value has not been attained, the personal objects the debtor chooses to keep may be exempted from seizure. Such movable property is presumed to belong to the debtor.

Work instruments needed for the personal exercise of the debtor's professional activities may also be exempted from seizure.

Such property may nevertheless be seized and sold for the amounts owed on the sale price, or seized and sold by a creditor holding a hypothec on it, as applicable.

Companion animals and the following property are exempt from seizure in the hands of debtors:

- (1) the food, fuel, linens and clothing needed for their life and the life of their family;
- (2) the things they need or a member of their family needs in order to compensate for a handicap or treat an illness;
- (3) *(subparagraph repealed)*;
- (4) family papers and portraits, medals and other decorations.

Any waiver of the exemption of such property from seizure is null.

2014, c. 1, a. 694; 2015, c. 35, s. 7; I.N. 2016-12-01.

**695.** A passenger motor vehicle cannot be seized if the vehicle is necessary in order to maintain work income or an active job search. Nor can it be seized if it is necessary in order to meet the basic needs of the debtor and the debtor's dependants or ensure that they receive the care required by their state of health or can pursue their education. Nevertheless, such a motor vehicle may be seized if the bailiff considers that the debtor can meet essential travel needs by using public transit, another vehicle that is available to the debtor or a replacement vehicle of lesser value.

A motor vehicle's exemption from seizure is ineffective against the seller as regards the amounts owed on the sale price and against a hypothecary creditor; it is also ineffective against a seizure in execution of a judgment that is subject to the rules of execution set out in the Code of Penal Procedure (chapter C-25.1).

2014, c. 1, a. 695.

**696.** The following are exempt from seizure:

- (1) consecrated vessels and other things used for religious worship;
- (2) books of account, debt securities and other papers if in the possession of a debtor who does not operate an enterprise, except bonds, promissory notes and other instruments payable to order or to bearer;
- (3) amounts reimbursed to the debtor for costs relating to an illness, a disability or an accident;

- (4) 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;

(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. However, the property may be seized on the request of creditors whose claims are subsequent to the gift or the opening of the legacy, with leave of the court and to the extent it determines;

(3) contributions paid or to be paid into a supplemental pension plan to which an employer contributes on behalf of employees, or into another pension plan established or governed by law;

(4) the capital accumulated for the payment of an annuity or accumulated in a retirement savings instrument if the capital has been alienated or is under the control of a third person and satisfies the other prescriptions of law.

Nevertheless, the property described in the second paragraph may be seized up to a limit of 50% to execute partition of a family patrimony, a support claim or a compensatory allowance or the payment of a financial contribution as support to meet the needs of a child born as a result of a sexual assault. This rule has precedence over any contrary legislative provision.

2014, c. 1, a. 696; 2023, c. 13, s. 54.

**697.** 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 it was originally designed, 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.

2014, c. 1, a. 697.

**698.** The debtor's income is exempt from seizure except the portion 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 rendered in the exercise of an office or under an employment contract, a service contract or a contract of enterprise or mandate;

(2) money paid as a retirement benefit, a pension, an income replacement indemnity or judicially awarded support, this money, however, being exempt from seizure in the hands of the payer; and

(3) money paid as a social assistance benefit, an Aim for Employment benefit, a social solidarity allowance or a basic income, except that sums received under the Individual and Family Assistance Act (chapter A-13.1.1) and declared by that Act to be exempt from seizure in the hands of the recipient are so exempt from seizure.

The following are not included in the debtor's income, however:

- (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 fund;
- (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 basic needs and those of dependants. Those exemptions are determined on the basis of the monthly amount granted as a social solidarity allowance to single persons under the Individual and Family Assistance Act, which amount is annualized then calculated on a weekly basis by the Minister of Justice, that is, \$298.62; for the debtor, the exemption is 125% of the latter amount, that is, \$373.27, for the first dependant, 50%, that is, \$149.31, and for any other dependant, 25%, that is, \$74.65; these figures are updated by the Minister on 1 April each year.

C is the seizure percentage, that is, 30%. However, for the execution of partition of a family patrimony or for the payment of a support debt, a financial contribution as support to meet the needs of a child born as a result of a sexual assault or a compensatory allowance, the percentage is 50%.

2014, c. 1, a. 698; I.N. 2015-07-01; I.N. 2016-04-01; I.N. 2017-04-01; 2016, c. 25, s. 40; I.N. 2018-03-01; I.N. 2019-03-01; I.N. 2020-03-01; I.N. 2020-12-10; I.N. 2021-12-01; 2018, c. 11, s. 25; I.N. 2023-03-15; 2023, c. 13, s. 55; I.N. 2024-04-01; I.N. 2024-12-01.

**699.** A debtor whose income consists in earnings as a self-employed worker or is received from an employer not resident in Québec must, to benefit from exemption from seizure for a portion of that income, enter into an agreement with the bailiff to pay in instalments over the period of time they determine, which may exceed the one year prescribed in article 663, or make a voluntary deposit undertaking with the court clerk. The debtor benefits from the exemption from seizure so long as all undertakings are complied with. The debtor may, to determine that income, subtract any expenses incurred to earn it.

2014, c. 1, a. 699.

**700.** The immovable serving as the debtor's principal residence may be seized to execute a support claim or to execute another claim of \$20,000 or more, not including legal costs.

It may also be seized to execute a claim of any amount secured by a prior claim or a hypothec. In the case of a legal hypothec arising out of a judgment, however, the amount of the claim must be at least \$20,000; otherwise, the registration of such a hypothec is valid only for conservatory purposes.

2014, c. 1, a. 700; I.N. 2016-12-01.

**701.** A decision made by the bailiff under the exemption from seizure rules may, on an application, be reviewed by the court.

2014, c. 1, a. 701.

## TITLE II

### SEIZURE OF PROPERTY

#### CHAPTER I

##### GENERAL PROVISIONS

**702.** A judgment creditor may exercise different means of execution at the same time.

A judgment creditor may seize any of the debtor's movable property that is in the debtor's possession or that is held by the creditor or a third person. The judgment creditor may also seize any immovables possessed by the debtor.

The effect of seizure is to place the property belonging to the debtor under judicial control.

2014, c. 1, a. 702.

**703.** Movable property is seized by the bailiff on the premises where it is located. Income or money is seized in the hands of the third persons who owe it, through notification of the notice of execution 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.

2014, c. 1, a. 703.

## CHAPTER II

### SEIZURE OF MOVABLE AND IMMOVABLE PROPERTY IN EXECUTION

**704.** The seizure of movable property may be effected between 7 a.m. and 9 p.m. on any day except a holiday by serving the notice of execution on the debtor and the garnishee. It may be effected outside those hours with the permission of the court clerk obtained without formality and recorded on the notice of execution, and even on a holiday if the property is misappropriated, conveyed or abandoned.

A seizure not completed at 9 p.m. may be continued without formality past that time if the bailiff considers it necessary in the parties' interests; otherwise, it is continued as soon as possible in the following working days, after taking the necessary security measures.

2014, c. 1, a. 704; I.N. 2016-12-01.

**705.** The seizure of an immovable is effected by registering the minutes of seizure, together with the notice of execution and proof of service on the debtor, in the land register.

The Land Registrar registers the seizure on presentation of the minutes and notice.

2014, c. 1, a. 705; 2020, c. 17, s. 66.

**706.** Movables permanently and physically attached or joined to an immovable that are immovables under article 903 of the Civil Code may only be seized with the immovable to which they are attached or joined; however, they may be seized separately by a prior or hypothecary creditor, or by another creditor if they do not belong to the owner of the immovable.

2014, c. 1, a. 706.

**707.** 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 notice of execution 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 and, if an authorization was granted by the court, a reference to that authorization.

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.

2014, c. 1, a. 707.

**708.** When seizing movable property of an enterprise, a road vehicle, other movable property which, according to the regulation under article 2683 of the Civil Code, may be hypothecated or a group of such items of property, the bailiff checks in the register of personal and movable real rights whether rights in the property have been granted.

2014, c. 1, a. 708.

**709.** The debtor has two months from the seizure to sell a seized immovable by agreement unless it is hypothecated. If the debtor waives this right or does not exercise it within the prescribed time, the bailiff may sell the seized property.

A sale by the debtor is subject to the approval of the bailiff, who determines whether the sale price is commercially reasonable. If that is the case, the bailiff notifies 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 may be concluded on the expiry of that time limit. The sale price obtained must be deposited in the hands of the bailiff.

2014, c. 1, a. 709.

**710.** At any time before the sale of seized property, the debtor may obtain release of seizure by paying the judgment amount, including execution costs. If the seizure of certain property causes prejudice to the debtor and if the bailiff authorizes it, the debtor may also replace the seized property, unless it is hypothecated, 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 and files a notice of release in each of the records concerned at the court office.

2014, c. 1, a. 710.

## CHAPTER III

### SEIZURE IN THE HANDS OF THIRD PERSONS

#### DIVISION I

##### GENERAL RULES

**711.** The notice of execution served on the garnishee directs that person to declare to the bailiff, within 10 days, the amount, cause and terms of their current or potential indebtedness to the debtor at the time the declaration is made. The garnishee must provide with the declaration a detailed statement of the debtor's property that is in the garnishee's possession, specifying under what title the property is held. The garnishee must also disclose any seizures made in the garnishee's hands.

The bailiff files the garnishee's declaration with the court office and notifies it to the seizing creditor and the debtor, who have 10 days to contest it. If the execution proceedings are for two or more judgments or if two or more creditors are involved in the execution proceedings, the bailiff files the declaration in each of the records concerned.

2014, c. 1, a. 711.

**712.** Seizure makes the garnishee the custodian of the property seized.

On the bailiff's request or on the court clerk's order, the garnishee is required to deliver the debtor's property that is in the garnishee's possession to the bailiff. The garnishee is also required to give the bailiff, on request, all relevant documents relating to the garnishee's debt toward the debtor. In addition, on the seizing creditor's or the bailiff's express request, the garnishee is required to submit to an examination to complete the garnishee's declaration, as if it were a post-judgment examination.

2014, c. 1, a. 712.

**713.** If income of the debtor is seized, the garnishee is required, within 10 days after service of the notice of execution, to remit to the bailiff the seizable portion of what the garnishee owes to the debtor.

If the debtor has multiple sources of income, the bailiff, after determining the seizable portion of the income, determines the portion that each garnishee must withhold and remit to the bailiff. If the debtor's sources of income are not easily identifiable 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 ends the contractual relationship with the debtor, the garnishee is required to declare as much to the bailiff without delay. If a dispute arises between the garnishee and the debtor, the onus is on the garnishee, under pain of damages, to prove that the contractual relationship was not changed or ended because of the seizure of income.

The seizure remains binding for so long as the debtor's sources of income are maintained and all claims filed by the creditors have not been paid.

2014, c. 1, a. 713.

**714.** 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 or a creditor may ask the court to assess the value of the services rendered and determine a fair remuneration. The remuneration determined by the court is deemed to be the debtor's remuneration from the date of the application until it is shown that the amount should be changed. The application is notified to the debtor and the garnishee at least five days before it is to be presented before the court; the decision of the court cannot be appealed.

2014, c. 1, a. 714.

**715.** If the garnishee's debt is payable at a future time, the garnishee must, at maturity, pay to the bailiff what the garnishee owes to the debtor. 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.

2014, c. 1, a. 715.

**716.** If the garnishee declares not being indebted to the debtor and cannot be proved to be so, the garnishee or the debtor may obtain a release of seizure from the bailiff, with execution costs to be borne by the seizing creditor.

2014, c. 1, a. 716.

**717.** If the garnishee is in default for failure to declare, withhold or deposit a sum of money or makes a declaration that proves to be false, the garnishee may be ordered to pay the sum owing to the seizing creditor as if the garnishee were the debtor.

The garnishee may, however, obtain the authorization to declare or deposit at any time, even after judgment, on payment of the sums the garnishee should have withheld and deposited since notification of the notice of execution. In such a case, the garnishee is required to pay all costs resulting from the default.

2014, c. 1, a. 717.

**718.** If, while a seizure is binding or its execution is stayed, a judgment ordering partition of a family patrimony or awarding support or a compensatory allowance operates to change the amount that the garnishee must pay, the bailiff, on being informed of the judgment, so advises the garnishee, the debtor and the other parties.

2014, c. 1, a. 718.

## **DIVISION II**

### **SPECIAL RULES IN SUPPORT MATTERS**

**719.** If a seizure of income is effected under a judgment awarding support, 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 effected under the Family Orders and Agreements Execution Assistance Act (R.S.C. 1985, c. 4 (2nd Suppl.)).

Release may be given on the expiry of one year after the payment of all arrears, if there is no other claim in the record and execution has not been stayed; release cannot be given, however, if the Minister of Revenue is acting in the capacity of claimant or seizing creditor under the Act to facilitate the payment of support (chapter P-2.2).

2014, c. 1, a. 719.

**720.** 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, on the debtor's request, may, once the arrears are paid, stay the execution of the seizure provided the debtor undertakes to make the support payments, as they become due, directly to the bailiff and provides sufficient guarantees to secure compliance with that undertaking.

Such a stay may be granted for not less than six months nor more than one year; the bailiff advises the support creditor and the other creditors, as well as the garnishee, who then ceases to make deposits. During that period, the bailiff pays the sums received from the debtor to the support creditor at least monthly.

2014, c. 1, a. 720.

**721.** The bailiff 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 it becomes due, or if a claim is filed in the debtor's record by a third person. The bailiff advises the support creditor, the other creditors as well as the garnishee, who must, within 10 days after being advised, remit the seizable portion of the debtor's income to the bailiff.

2014, c. 1, a. 721.

## CHAPTER IV

### SPECIAL RULES APPLICABLE TO CERTAIN SEIZURES

#### DIVISION I

##### SEIZURE ON DEBTOR'S PERSON

**722.** If the bailiff is convinced that there is property of value on the debtor's person, the bailiff may apply to the court for authorization to seize the property on the debtor's person and to obtain the assistance of a peace officer if necessary. The application need not be notified to the debtor.

Before making the seizure so authorized, the bailiff must ask the debtor to hand over the property. If the debtor refuses, the bailiff may search the debtor, with the assistance of a peace officer if necessary. The search and seizure is carried out in such a manner as to limit violations of personal rights and freedoms.

2014, c. 1, a. 722.

#### DIVISION II

##### SEIZURE OF SECURITIES OR SECURITY ENTITLEMENTS TO FINANCIAL ASSETS

**723.** Certificated securities are seized by seizing certificates, through service of the notice of execution on the person holding the certificates and on the issuer or the issuer's transfer agent in Québec. If certificates that should have been issued were not issued, the securities are seized in the hands of the issuer, who is then required to issue a certificate in the debtor's name and hand it over to the bailiff.

Uncertificated securities or security entitlements to financial assets are seized by serving the notice of execution on the issuer or on the securities intermediary that maintains the debtor's securities account, as applicable.

2014, c. 1, a. 723.

**724.** Securities, whether certificated or uncertificated, or security entitlements to financial assets may be seized by serving the notice of execution 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.

2014, c. 1, a. 724.

**725.** The seizure of securities or security entitlements to financial assets entails the seizure of the interest, dividends, distributions and other rights attached.

2014, c. 1, a. 725.

**726.** 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.

2014, c. 1, a. 726.

## **DIVISION III**

### **SEIZURE OF TECHNOLOGICAL MEDIA**

**727.** On seizing a technological medium, the bailiff is required to inform the debtor or the garnishee of their right to transfer any documents they wish to preserve 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 is required to advise the bailiff, within 15 days after the seizure, of their intention to transfer documents.

The costs of the transfer are borne by the debtor or the garnishee.

2014, c. 1, a. 727.

**728.** 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 and draws up minutes recording their destruction.

If the bailiff considers it necessary, a specialist may be called on to assist with the destruction of the documents. If any of the documents are covered by the professional secrecy imposed on the debtor or the garnishee, the bailiff must be assisted by a representative designated by the professional order of the debtor or the garnishee.

2014, c. 1, a. 728.

## **DIVISION IV**

### **SEIZURE OF PROPERTY IN SAFE OR SAFETY DEPOSIT BOX**

**729.** Property in a safe or a safety deposit box is seized through the opening of the safe or box and the drawing up of minutes of seizure by the bailiff. The minutes of seizure, which must state the names of the persons present and describe the content of the safe or box and the property seized, are notified to the creditor and the debtor and, if applicable, to the lessor in the lessor's capacity as custodian.

If the bailiff cannot obtain the debtor's co-operation in opening the safe or safety deposit box, the court, on an application, may authorize the opening of the safe or box in the manner it determines. The application is notified to the debtor and, if applicable, to the lessor and any other lessees of the safe or box. As of the notification, the lessor is prohibited from giving access to the safe or box in the bailiff's absence.

2014, c. 1, a. 729.

## **DIVISION V**

### **SEIZURE OF REGISTERED ROAD VEHICLES**

**730.** A registered road vehicle may be seized through notification of the notice of execution to the Société de l'assurance automobile du Québec. The notice of execution contains the number appearing on the registration plate of the seized vehicle and the identification number, model and year of the vehicle.

No transfer of registration may be made after notification of the notice of execution unless the Société is informed by the bailiff that a release of seizure has been granted.

2014, c. 1, a. 730.

## CHAPTER V

### CUSTODY OF SEIZED PROPERTY

**731.** The bailiff gives custody of the seized property to the debtor, who is required to accept it. If the debtor is a legal person, the bailiff gives custody of the property to its officers or to one of its officers.

With the authorization of the court, the bailiff may entrust the seized property to a custodian other than the debtor. Custody of the property cannot be given to an insolvent person or to a person who may be placed in a conflict of interest situation as a result, and the custody costs must be reasonable under the circumstances.

The seizing creditor, the creditor's attorney, their spouses and persons related to them 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 consent to the seizure.

The custodian of seized property is required to disclose to the bailiff any situation which may result in the loss of the property.

2014, c. 1, a. 731.

**732.** If the seizure is against an immovable, the bailiff may ask the court to appoint a sequestrator.

The sequestrator so appointed is answerable to the bailiff for the sequestrator's administration; the sequestrator, after advising the interested persons, 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.

2014, c. 1, a. 732.

**733.** The custodian of seized property may move the property, with the bailiff's consent. The custodian is required to 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, damages it or fails to disclose a situation that results in its loss, the custodian is required to provide reparation for any resulting prejudice and is liable to contempt of court.

2014, c. 1, a. 733.

**734.** The bailiff may 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 ascertaining the state or condition of the property.

2014, c. 1, a. 734.

## CHAPTER VI

### OPPOSITION TO SEIZURE AND SALE

#### DIVISION I

##### GENERAL PROVISIONS

**735.** A person may oppose the seizure or proposed sale of property and ask for the annulment in whole or in part of the seizure or sale proceedings if

- (1) the property is exempt from seizure;
- (2) the debt is extinguished;
- (3) the proposed sale price is not commercially reasonable;
- (4) the proceedings are 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; or
- (5) a right may be exercised to revendicate the seized property or any part of it.

The debtor's creditors may oppose the proposed sale only if the proposed sale price is not commercially reasonable or if the sale may be affected by serious irregularities.

A third person in whose favour an encumbrance exists against the property may also oppose the sale if the property is advertised without any mention of the encumbrance and the encumbrance will be discharged by the sale.

As well, any person whose interests are adversely affected by reason of the seized property being advertised as being subject to an encumbrance may oppose the property being sold subject to the encumbrance, unless sufficient security is given to guarantee that the property will be sold for a price that will ensure payment of the person's claim.

2014, c. 1, a. 735.

**736.** The opposition must, within 15 days after notification of the minutes of seizure, the notice of sale or the seizure in the hands of a third person, be served on the bailiff, the debtor, the seizing creditor and the garnishee, and notified to the other creditors and the persons whose rights in the property are registered in the land register or the register of personal and movable real rights.

2014, c. 1, a. 736.

## **DIVISION II**

### **EFFECTS OF OPPOSITION**

**737.** 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 that is notified before the sale cannot stop the sale, except if the court so orders on the opposer showing sufficient cause.

2014, c. 1, a. 737.

**738.** An opposition to a seizure of income stays only the distribution of the sums 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.

2014, c. 1, a. 738.

**739.** 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, to the extent possible and after

having advised the opposer, continues to execute in order to satisfy the instructions and claims of the other creditors.

2014, c. 1, a. 739.

**740.** An opposer whose opposition is dismissed is liable toward the creditors, the debtor and the garnishee for the interest on the amount due to the creditors and for the cost of safekeeping the property for the time during which execution was stayed.

2014, c. 1, a. 740.

**741.** An opposition by a person whose earlier opposition was dismissed does not stay execution unless it is based on facts that occurred after the earlier opposition was made and the stay is ordered by the court. The application for stay, which may be made without formality, must be preceded by two days' notice to the seizing creditor, unless the court dispenses with such notice.

2014, c. 1, a. 741.

### TITLE III

#### SALE UNDER JUDICIAL AUTHORITY

#### CHAPTER I

##### CONDUCT OF SALE

**742.** A sale under judicial authority is conducted to sell property seized to execute a judgment or property that is surrendered or whose surrender is ordered on the exercise of hypothecary rights.

In the former case, the sale is under the responsibility of a bailiff and governed by the rules of this Title. In the latter case, the sale is under the responsibility of the person designated under article 2791 of the Civil Code and is governed by the rules of that Code and, with the necessary modifications, by the rules of this Title.

2014, c. 1, a. 742.

**743.** The bailiff in charge of the sale is responsible for the conduct of all related operations. The bailiff is required to inform the interested persons and, at the time of the sale, the purchaser, of the capacity in which the bailiff is acting.

The bailiff is duty-bound to keep the creditor, the debtor and any other interested person who so requests informed of any steps taken, and to keep records that are sufficiently detailed for the rendering of an account to the court and to the interested persons.

The bailiff, if they consider it necessary, may ask the court for any instruction or order to facilitate the performance of their duties and ensure the most advantageous sale.

2014, c. 1, a. 743.

**744.** The bailiff has the option, depending on the nature of the property, of selling by agreement, through a call for tenders or by auction; the bailiff sets the terms of the sale.

The sale must be made in the interests of the debtor and the creditors, at a commercially reasonable price and using the most appropriate method of realization in the circumstances.

2014, c. 1, a. 744.

**745.** The bailiff may sell, without delay or formality, movable property that is perishable, likely to depreciate rapidly or expensive to preserve.

2014, c. 1, a. 745.

**746.** If several items of property have been seized, only those whose sale is necessary to pay the claims, including principal, interest and costs, may be sold, unless the debtor consents in writing to the sale of all the seized property. The debtor has the right, except as regards rights conferred by law to hypothecary creditors, to determine the order in which the seized property is to be sold.

2014, c. 1, a. 746.

## CHAPTER II

### METHOD OF REALIZATION

**747.** The bailiff may fix a reserve price for property offered for sale. The bailiff may seek an expert appraisal if the nature or value of the property justifies doing so.

2014, c. 1, a. 747.

**748.** Whether the sale is by agreement, through a call for tenders or by auction, it must be preceded by the publication of a notice setting out the nature of the property, the method of sale used and the charges and terms and conditions of the sale. The notice of sale is published in the sales register kept by the Minister of Justice, as well as in the land register if the property is an immovable.

In order to achieve a better realization of the property, the bailiff may also, on the request and at the expense of the debtor or a creditor, further publicize the sale.

The Minister may, by regulation, establish standards concerning the presentation, form and content of notices, the storage medium for and the manner of keeping the sales register, consultation procedures, the storage medium and schedule for preserving the notices, as well as any other rules needed to set up and run the register, including the applicable tariffs.

2014, c. 1, a. 748.

**749.** The notice of sale must be so published at least 30 days before the scheduled sale date.

The bailiff notifies the notice without delay to the debtor, the garnishees and any creditors having advised the bailiff of their claim or registered their right in the seized property in the register of personal and movable real rights or the land register and having required the registration of their address in connection with the property.

If the sale does not take place, the bailiff records as much in the sales register and, if applicable, informs the land registrar so that the notice of sale may be struck from the land register.

2014, c. 1, a. 749.

**750.** The bailiff may take into consideration any representations made by the debtor, a creditor or a third person pursuing an interest in the property on the method of sale chosen, the terms of sale or the reserve price.

Within 10 days before the sale of the property, anyone who is not satisfied with the bailiff's response may go before the court. However, the sale is stayed only if the court orders that it be stayed.

2014, c. 1, a. 750.

**751.** If the sale is stayed, either because an application is pending, the court has ordered it or the debtor and the creditors have consented to it, the bailiff publishes a notice of the stay in the sales register. When the stay is lifted, if the sale can take place on the date initially stated in the notice, the bailiff records as much in the sales register. If the sale cannot take place on that date, the bailiff must publish a new notice of sale.

2014, c. 1, a. 751.

**752.** The bailiff conducting the sale 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 is required to pay the price to the bailiff.

2014, c. 1, a. 752.

**753.** A bailiff conducting the sale by a call for tenders may do so by invitation or by a public call for tenders. Sufficient information must be included in the call for tenders to allow bidders to tender in sufficient time.

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.

2014, c. 1, a. 753; I.N. 2016-12-01.

**754.** In the case of a sale by auction, the bailiff sets out in the notice of sale the nature of the property, the reserve price, if any, and sufficient information to allow bids to be made. Also to be included is the bailiff's name and contact information and those of the auctioneer selected, if any.

If bids may be entered by way of information technology, the notice must state how and when bids will be received and must specify the closing date.

At the sale, the bailiff or the auctioneer, as applicable, may, in the interests of the creditors or the debtor, refuse a bid, withdraw the property and put it up for sale again, with or without a reserve price, or end the sale.

2014, c. 1, a. 754.

**755.** The bailiff is bound by the conditions and restrictions that govern the transfer of securities and the establishment of security entitlements to financial assets and are set out in the issuer's constituting act or by-laws or in the instrument governing the securities account maintained by a securities intermediary. As well, the bailiff is bound by the conditions and restrictions set out in an agreement to which the debtor is party. The bailiff may apply to the court for an order authorizing the sale if such conditions and restrictions significantly reduce the value of the securities or security entitlements; in such a case, the court determines the applicable conditions.

The purchaser of the securities or security entitlements is subject to the conditions and restrictions set out in the legal person's constituting act and by-laws and any unanimous shareholder agreement. The purchaser must be informed beforehand of any restrictions attached to the securities or security entitlements.

2014, c. 1, a. 755.

**756.** If property cannot be sold, the bailiff returns it to its owner. If the owner refuses the property, the bailiff may give it away to a charity or, if it cannot be given away, dispose of it as the bailiff sees fit.

2014, c. 1, a. 756.

## CHAPTER III

### SALE AND EFFECTS OF SALE

**757.** As soon as the sale is made, the bailiff publishes in the sales register a notice stating the price and the terms of the sale. The notice is also filed with the court office.

2014, c. 1, a. 757.

**758.** If the purchaser refuses to sign the deed of sale, to pay the sale price, or to take possession of the property, the bailiff, on the expiry of 10 days after the sale, may obtain an order from the court having the same force and effect as a deed of sale or an order for forced surrender, for eviction from the immovable or for forced removal of the movable property.

2014, c. 1, a. 758.

**759.** The sale discharges all real rights not included in the terms of sale. It does not discharge

(1) servitudes;

(2) emphyteusis, the rights needed to exercise superficies, and substitutions not yet open, except when a prior or preferred claim is mentioned in the court record; or

(3) the administrative encumbrance affecting a low-rental housing complex.

The sale does not terminate leases in progress that are registered in the register of personal and movable real rights or the land register.

Nor does the sale 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 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 imposition.

2014, c. 1, a. 759.

**760.** The sale may be annulled on the application of the purchaser if the latter is liable to eviction by reason of some real right not discharged by the sale, or if the property differs so much from the description given in the notice of sale or the minutes of seizure that it is to be presumed that the purchaser would not have bought it had the purchaser been aware of the true description. The sale may also be annulled on the application of the debtor or a creditor if the property is sold for a price that is clearly unreasonable given market conditions or if the sale is affected by serious irregularities that could not, despite reasonable diligence, be raised before the sale.

The application for the annulment of a sale must be notified within 20 days after the sale in the case of movable property, or within 60 days after the sale in the case of immovable property. These are strict time limits. On the expiry of the time limits, the court clerk may, on request, issue a certificate attesting that no application for the annulment of the sale has been filed.

2014, c. 1, a. 760.

**761.** 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 may in no case be lower 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 (chapter F-2.1), unless the court is convinced that the immovable cannot be sold within an acceptable time for such a price.

2014, c. 1, a. 761.

## **TITLE IV**

### **DISTRIBUTION OF PROCEEDS OF EXECUTION**

#### **CHAPTER I**

##### **GENERAL PROVISIONS**

**762.** A bailiff who sells property following a judicial authorization or a seizure or who seizes sums of money is responsible for distributing the proceeds of the sale or the sums seized to the creditors. A bailiff or a court clerk who periodically collects income of a debtor is responsible for distributing the sums collected to the creditors.

If the bailiff considers it necessary, the bailiff may retain the services of a lawyer or a notary to assist in preparing the collocation scheme, or ask the court for any order to facilitate the distribution of the proceeds of the sale or the sums seized.

2014, c. 1, a. 762.

#### **CHAPTER II**

##### **DISTRIBUTION OF PROCEEDS OF SALE OR MONEY SEIZED**

##### **DIVISION I**

###### **BAILIFF'S REPORT**

**763.** Within 30 days after the sale is made, the sums of money seized are remitted to the bailiff or an affirmative declaration is made by the garnishee, the bailiff files a report with the court office, attaching all supporting documents, including any appraisal obtained beforehand, the confirmation given by the dealer in charge of the sale of securities or security entitlements listed and traded on a stock exchange, or the statement certified by the registrar.

The report states the names and contact information of the debtor and of the seizing creditor as well as those of the garnishee if property has been seized in the hands of a third person and those of the purchaser if a sale has occurred. If applicable, the report records the garnishee's declaration and the fact that it was not contested, and sets out the terms and conditions of the sale. It refers to the minutes of seizure and the publications made, mentions any opposition filed, and specifies all sums obtained; it mentions any minutes drawn up in the course of execution. If two or more persons are entitled to the proceeds of the sale or the sums seized, it must also include a collocation scheme.

2014, c. 1, a. 763.

**764.** For the preparation of the report, the bailiff may call a creditor to attend in order to be examined on facts relating to an encumbrance mentioned in the statement certified by the registrar or a claim filed in the record.

An admission by the creditor has full effect against the creditor without any further proceeding or formality.

2014, c. 1, a. 764.

**765.** The bailiff's report is notified to the debtor, to the creditors entitled to the proceeds of the sale or the sums seized, to the creditors whose rights are registered 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 service centre or school board in whose territory the immovable is located.

2014, c. 1, a. 765; 2020, c. 1, s. 310.

## **DIVISION II**

### **COLLOCATION SCHEME**

**766.** The collocation scheme states the names and contact information of the creditors, the nature of their 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 creditor, whether the claim 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 and the cost of distributing the proceeds of the sale or the sums seized;
- the cost of the seizure, including the cost of any post-judgment examination, and costs relating to the transportation and safekeeping of the property;
- the professional fee and other expenses 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) unsecured claims.

If an opposition to the seizure was made tardily by a person revendicating the property or holding a real right in the property, and the opposition was allowed after the sale, the bailiff enters the person's claim in the collocation scheme, according to the person's rank.

2014, c. 1, a. 766.

**767.** If there are indeterminate or unliquidated claims, the bailiff must reserve a sum sufficient to cover them out of the available moneys; the sum is deposited in a trust account until the claims are determined or liquidated, unless a judge orders otherwise.

If there are conditional claims, the creditors concerned are collocated according to their rank, but the amount of their claims is paid to subsequent creditors whose claims are payable, provided they give security, within the month following notification of the bailiff's report, 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, on condition of security being given for the return of the money in the event that the condition fails or becomes impossible, and paying interest to the bailiff, who distributes the interest to the creditors or remits it to the debtor after satisfying the creditors.

If there is a hypothecary claim with a term of payment, it becomes due on the sale of the hypothecated immovable, and is collocated accordingly.

2014, c. 1, a. 767.

**768.** If two or more items of property separately charged with different claims are sold for an aggregate price or if a creditor has a claim against part only of an item of property, the bailiff prorates 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 given to each creditor is calculated by determining the value of each item or part of property in relation to the value of the whole.

2014, c. 1, a. 768.

**769.** The bailiff, on their own initiative or on the request of an interested person, may revise the collocation scheme if it contains an error, in which case the bailiff is required to notify the collocation anew and file it with the court office.

2014, c. 1, a. 769.

**770.** Within 10 days after notification of the bailiff's report or the revised collocation scheme, any interested person may contest the scheme and ask the court for a determination of the persons to whom the proceeds of the sale and the sums seized are to be distributed.

The application is notified to the bailiff and to all those who received the bailiff's report. On such notification, the bailiff stays the distribution proceedings either entirely or only for the contested claim and subsequent claims.

2014, c. 1, a. 770.

**771.** 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 sums seized without delay, as provided in the bailiff's report.

2014, c. 1, a. 771.

## CHAPTER III

### DISTRIBUTION OF SEIZED INCOME

**772.** Periodically seized or collected income must be distributed to the creditors by the bailiff or, as applicable, by the court clerk at least quarterly, but in the case of a support creditor, at least monthly.

2014, c. 1, a. 772.

**773.** While a seizure of income remains binding, not only the seizing creditor but all creditors may participate in the distribution of the income; they must however have notified their claim, setting out the nature, date and amount of the debt, to the bailiff or the court clerk and to the debtor, the seizing creditor and the garnishee, and have provided supporting documents.

In the absence of supporting documents, the claim is not admissible, unless it is established to the satisfaction of the court that it is impossible for the creditor to produce such documents.

2014, c. 1, a. 773.

**774.** A claim bears interest from the date it was notified to the bailiff or the court clerk, at the lesser of the legal rate and the rate agreed between the parties; no claim relating to the difference between the interest rate agreed between the parties and the legal rate, for any period during which the legal rate is applicable, may be accepted.

2014, c. 1, a. 774.

**775.** Any interested party may, within 15 days after receiving notification of a creditor's claim, contest the claim by notifying the contestation to the bailiff or the court clerk, the debtor and the seizing creditor. The bailiff or the court clerk retains the sums the creditor would have been entitled to until a decision is rendered on the contestation.

2014, c. 1, a. 775.

**776.** The bailiff or the court clerk distributes seized income according to the following order of collocation:

(1) execution costs, including the cost of administering an instalment payment agreement and distributing the seized income, if applicable;

(2) support claims, for 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) hypothecary claims; and

(5) unsecured claims.

In all cases, the bailiff or the court clerk pays to a support creditor, out of the portion of income that is ordinarily seizable, the amount required to make the total amount distributed to that creditor equal to at least one-half of the sums distributed every month, up to the amount of support due.

However, a spouse's claim based on a marriage or civil union contract cannot be paid until all other claims have been discharged.

When the full amount of a claim has been paid to the creditor, the bailiff or 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 after the notification, the bailiff or the court clerk may, on request, give an acquittance by certifying on the debtor's copy of the notice of payment that it has not been contested.

2014, c. 1, a. 776.

**777.** The Minister of Justice may, when required by the situation, determine by order the cases and circumstances in which a court clerk may, in the bailiff's place, administer and distribute seized income, and determine the applicable conditions.

2014, c. 1, a. 777.

## AMENDING AND FINAL PROVISIONS

### GENERAL AMENDING PROVISIONS

**778.** In any Act or statutory instrument, the following terminological changes are made, with the necessary modifications:

(1) "recours collectif" in the French text, and "recours" in the French text when it means "recours collectif", are replaced by "action collective" and "action", respectively;

(2) "distress warrant", "writ", "writ of execution", "writ of seizure", "writ of seizure in execution", "writ of seizure in execution of an immovable", "writ of seizure in execution of movable property", "writ of seizure of immovables", "writ of seizure of movable property", "writ of seizure of movable property in execution",

and “writ of seizure of property” are replaced by “notice”, “notice of execution” or “order”, depending on the context, if a substitution is necessary, and if not, they are struck out;

(3) “jurisdiction” in the French text, when referring to the jurisdiction of a court of justice or an administrative tribunal, is replaced by “compétence”;

(4) “extrajudicial costs”, “extrajudicial fees”, “extra-judicial professional fees”, are replaced by “professional fees”, and “judicial fees” is struck out;

(5) “juridical day” is replaced by “working day” and “non-juridical day” is replaced by “holiday”;

(6) “mandate given in the anticipation of the mandator’s incapacity” or the equivalent is replaced by “protection mandate”;

(7) “writ of seizure by garnishment” and “writ of attachment” are replaced by “order to seize property in the hands of a third person”;

(8) “writ of possession” and “writ in an action of ejectment” are replaced by “eviction order”;

(9) “writ of habeas corpus” is replaced by “habeas corpus order”;

(10) “certified mail”, “certified or registered mail”, “registered or certified mail”, “registered or certified post”, “registered letter”, “registered or certified letter”, “registered mail”, “certified or registered letter” and “recommended or certified mail” are replaced by “registered mail”;

(11) any text, whether or not it contains an express reference to the Code of Civil Procedure (chapter C-25), that mentions an action or a recourse under article 33 of the Code of Civil Procedure, an extraordinary recourse or remedy provided for or within the meaning of the Code of Civil Procedure or an extraordinary recourse contemplated, provided or provided for in or provided by articles 834 to 850 of the Code of Civil Procedure is replaced by “application for judicial review under the Code of Civil Procedure (chapter C-25.01)”;

(12) “minutes of the determination of the boundaries”, “minutes of determination of boundaries”, “minutes of boundary determination”, “minutes of a boundary determination” are replaced by “minutes of the boundary-marking operations”;

(13) “rules of practice” is replaced by “court regulations” or “tribunal regulations” as appropriate;

(14) “sale by judicial authority” and “judicial sale” are replaced by “sale under judicial authority”.

2014, c. 1, a. 778.

**779.** *(Amendment integrated into c. A-32 s. 358; C-23.1, s. 86; C-25.1, aa. 265, 291 and 367; C-26, s. 194; E-20.1, s. 74.4; R-9, s. 28; S-11.011, s. 16.1; S-29.01, s. 244).*

2014, c. 1, a. 779.

**780.** *(Amendment integrated into c. C-19, ss. 14.1, 468.45.8, 568, 569 and 573.3.4; C-27.1, aa. 19, 614.8, 938.4, 1082 and 1094; C-37.01, s. 118.2; C-37.02, s. 111.2; S-30.01, s. 108.2; T-14, s. 6, V-6.1, ss. 204 and 358).*

2014, c. 1, a. 780.

**781.** *(Amendment integrated into c. A-6.002, s. 41; B-1.1, s. 146; E-2.2, ss. 37 and 657; E-3.3, s. 573; F-3.1.1, s. 114; R-8.1, s. 18; T-12, s. 86; V-5.01, s. 53).*

2014, c. 1, a. 781.

**782.** In any Act or statutory instrument, a reference to a provision of the former Code is replaced by a reference to the corresponding provision of the new Code.

2014, c. 1, a. 782.

**783.** Before updating the Compilation of Québec Laws and Regulations to enter the changes made necessary by the replacement of concepts predating the new Code of Civil Procedure (chapter C-25.01), the Minister of Justice publishes, on the website of the Québec Official Publisher, at least six months before the planned update, a consultation document explaining the nature and scope of the updating operations the Minister plans to carry out. The Minister tables the consultation document in the National Assembly. The Minister subsequently receives any comments submitted and publishes an information note prior to the publication of the update of the compilation, as required by section 4 of the Act respecting the Compilation of Québec Laws and Regulations (chapter R-2.2.0.0.2).

2014, c. 1, a. 783.

## SPECIFIC AMENDING PROVISIONS

### CIVIL CODE OF QUÉBEC

**784.** *(Amendment integrated into the Civil Code, a. 234).*

2014, c. 1, a. 784.

**785.** *(Amendment integrated into the Civil Code, a. 237).*

2014, c. 1, a. 785.

**786.** *(Amendment integrated into the Civil Code, aa. 568 and 574 — French).*

2014, c. 1, a. 786.

**787.** *(Amendment integrated into the Civil Code, a. 596.1).*

2014, c. 1, a. 787.

**788.** *(Amendment integrated into the Civil Code, a. 978).*

2014, c. 1, a. 788.

**789.** *(Amendment integrated into the Civil Code, a. 1529).*

2014, c. 1, a. 789.

**790.** *(Amendment integrated into the Civil Code, a. 1605).*

2014, c. 1, a. 790.

**791.** *(Amendment integrated into the Civil Code, a. 1641).*

2014, c. 1, a. 791.

**792.** *(Amendment integrated into the Civil Code, a. 1644).*

2014, c. 1, a. 792.

**793.** *(Amendment integrated into the Civil Code, a. 1758).*

2014, c. 1, a. 793.

**794.** *(Amendment integrated into the Civil Code, heading of Section IV of Chapter IX of Title II of Book I).*

2014, c. 1, a. 794.

**795.** *(Amendment integrated into the Civil Code, a. 2166).*

2014, c. 1, a. 795.

**796.** *(Amendment integrated into the Civil Code, a. 2387).*

2014, c. 1, a. 796.

**797.** *(Amendment integrated into the Civil Code, a. 2648).*

2014, c. 1, a. 797.

**798.** *(Amendment integrated into the Civil Code, a. 2718).*

2014, c. 1, a. 798.

**799.** *(Amendment integrated into the Civil Code, a. 2759).*

2014, c. 1, a. 799.

**800.** *(Amendment integrated into the Civil Code, a. 2787).*

2014, c. 1, a. 800.

**801.** *(Amendment integrated into the Civil Code, a. 2791).*

2014, c. 1, a. 801.

**802.** *(Amendment integrated into the Civil Code, a. 2793).*

2014, c. 1, a. 802.

**803.** *(Amendment integrated into the Civil Code, a. 2794).*

2014, c. 1, a. 803.

**804.** *(Amendment integrated into the Civil Code, a. 2892).*

2014, c. 1, a. 804.

**805.** *(Amendment integrated into the Civil Code, a. 2908).*

2014, c. 1, a. 805.

**806.** *(Amendment integrated into the Civil Code, a. 2958).*

2014, c. 1, a. 806.

**807.** *(Amendment integrated into the Civil Code, a. 2996).*

2014, c. 1, a. 807.

**808.** *(Amendment integrated into the Civil Code, a. 3000).*

2014, c. 1, a. 808.

**809.** *(Amendment integrated into the Civil Code, a. 3017).*

2014, c. 1, a. 809.

**810.** *(Amendment integrated into the Civil Code, a. 3069).*

2014, c. 1, a. 810.

INDIVIDUAL AND FAMILY ASSISTANCE ACT

**811.** *(Amendment integrated into c. A-13.1.1, s. 103.1).*

2014, c. 1, a. 811.

ACT RESPECTING FINANCIAL ASSISTANCE FOR EDUCATION EXPENSES

**812.** *(Amendment integrated into c. A-13.3, a. 31.0.1).*

2014, c. 1, a. 812.

ACT RESPECTING LEGAL AID AND THE PROVISION OF CERTAIN OTHER LEGAL SERVICES

**813.** *(Amendment integrated into c. A-14, s. 4.6).*

2014, c. 1, a. 813.

ACT RESPECTING PARENTAL INSURANCE

**814.** *(Amendment integrated into c. A-29.011, a. 31.1).*

2014, c. 1, a. 814.

ACT RESPECTING THE BARREAU DU QUÉBEC

**815.** *(Amendment integrated into c. B-1, s. 1).*

2014, c. 1, a. 815.

**816.** *(Amendment integrated into c. B-1, heading of Division XII).*

2014, c. 1, a. 816.

**817.** *(Amendment integrated into c. B-1, s. 125).*

2014, c. 1, a. 817.

**818.** *(Amendment integrated into c. B-1, s. 126).*

2014, c. 1, a. 818.

**819.** *(Amendment integrated into c. B-1, s. 127.1).*

2014, c. 1, a. 819.

## CODE OF CIVIL PROCEDURE

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### CODE OF PENAL PROCEDURE

**820.** *(Amendment integrated into c. C-25.1, a. 330).*

2014, c. 1, a. 820.

**821.** *(Amendment integrated into c. C-25.1, a. 331).*

2014, c. 1, a. 821.

### ACT RESPECTING MUNICIPAL COURTS

**822.** *(Repealed).*

2014, c. 1, a. 822; 2014, c. 10, s. 6.

### COURT BAILIFFS ACT

**823.** *(Amendment integrated into c. H-4.1, s. 13).*

2014, c. 1, a. 823.

### SPECIAL PROCEDURE ACT

**824.** *(Omitted).*

2014, c. 1, a. 824.

### YOUTH PROTECTION ACT

**825.** *(Amendment integrated into c. P-34.1, s. 82).*

2014, c. 1, a. 825.

**826.** *(Amendment integrated into c. P-34.1, s. 85).*

2014, c. 1, a. 826.

### ACT RESPECTING THE CLASS ACTION

**827.** *(Amendment integrated into c. R-2.1, Title of the Act).*

2014, c. 1, a. 827.

**828.** *(Amendment integrated into c. R-2.1, s. 20).*

2014, c. 1, a. 828.

### COURTS OF JUSTICE ACT

**829.** *(Amendment integrated into c. T-16, s. 12).*

2014, c. 1, a. 829.

**830.** (*Amendment integrated into c. T-16, s. 146*).

2014, c. 1, a. 830.

**831.** (*Amendment integrated into c. T-16, s. 147*).

2014, c. 1, a. 831.

**832.** (*Amendment integrated into c. B-1, r. 22*).

2014, c. 1, a. 832.

## FINAL PROVISIONS

**833.** The new Code of Civil Procedure (chapter C-25.01) replaces the former Code of Civil Procedure (chapter C-25).

The Code applies as soon as it comes into force. However,

(1) in first instance, originating applications that have already been filed continue to be governed by the former Code solely as regards agreements concerning the conduct of the proceeding and the presentation of the application before the court and time limits;

(2) cases that would be under the jurisdiction of a different court continue before the court already seized of the matter and those that would be under the jurisdiction of the Small Claims Division of the Court of Québec continue before the division of the Court of Québec 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) if already under way, the execution of a judgment, of a decision or of a juridical act that has the same force and effect as a judgment continues in accordance with the former Code, except in the case of execution proceedings already under way in accordance with the rules governing voluntary deposit;

(5) for the purposes of Book VIII, until an order of the Minister of Justice is published in the *Gazette officielle du Québec* indicating that the sales register is operational, the publication of notices in the sales register is to be as follows:

(a) the notice preceding the sale, required by article 748, is to be published in accordance with the rules established by the new Code for notification by public notice and to be notified to the persons mentioned in the second paragraph of article 749;

(b) the notice indicating that the sale will not take place or is suspended, if such is the case, is to be notified to the persons to whom the notice of sale was notified;

(c) the notice following the sale, required by article 757, is to be filed at the office of the court where the notice of execution is filed;

(d) a notice of sale published before the date set in the ministerial order is not required to be published in the sales register; the rules prescribed in subparagraphs *b* and *c* apply in such a case, with the necessary modifications.

2014, c. 1, a. 833.

**834.** The Government may, by a regulation made before 1 January 2016, adopt any other transitional or consequential provision or any measure that is necessary to facilitate the carrying out of Book VIII of the new Code of Civil Procedure (chapter C-25.01).

2014, c. 1, a. 834.

**835.** In any Act or statutory instrument, summoning a person by a summons, subpoena or writ or by any other means is equivalent to calling a person to attend at court by a subpoena and a pleading cannot be invalidated for the sole reason that it is identified by any of these other terms rather than as a subpoena or, conversely, as a subpoena rather than by any of these other terms.

In addition, in any Act or statutory instrument, except where the law requires that service be made by bailiff, the service of a pleading is equivalent to its notification and, subject to the same exception, the notification of a pleading cannot be invalidated for the sole reason that it is referred to as service nor can the service of a pleading be invalidated for the sole reason that it is referred to as notification.

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2014, c. 1, a. 835.

**836.** *(Omitted).*

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2014, c. 1, a. 836.

## **SCHEDULE I**

*(Article 494)*

### **CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS**

*(Concluded 15 November 1965)*

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

#### **Article 1**

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

#### **CHAPTER I – JUDICIAL DOCUMENTS**

##### **Article 2**

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

##### **Article 3**

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

##### **Article 4**

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

##### **Article 5**

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

*a)* by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

*b)* by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (*b*) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

#### Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

#### Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

#### Article 8

Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

#### Article 9

Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.

Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

#### Article 10

Provided the State of destination does not object, the present Convention shall not interfere with –

- a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
- b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

#### Article 11

The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

#### Article 12

The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by –

- a) the employment of a judicial officer or of a person competent under the law of the State of destination,
- b) the use of a particular method of service.

#### Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

#### Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

#### Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that –

- a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

- a) the document was transmitted by one of the methods provided for in this Convention,
- b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

#### Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –

- a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

### CHAPTER II – EXTRAJUDICIAL DOCUMENTS

#### Article 17

Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

### CHAPTER III – GENERAL CLAUSES

#### Article 18

Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

#### Article 19

To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

#### Article 20

The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with –

- a)* the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,
- b)* the language requirements of the third paragraph of Article 5 and Article 7,
- c)* the provisions of the fourth paragraph of Article 5,
- d)* the provisions of the second paragraph of Article 12.

#### Article 21

Each Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following –

- a)* the designation of authorities, pursuant to Articles 2 and 18,
- b)* the designation of the authority competent to complete the certificate pursuant to Article 6,
- c)* the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each Contracting State shall similarly inform the Ministry, where appropriate, of –

- a)* opposition to the use of methods of transmission pursuant to Articles 8 and 10,
- b)* declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,
- c)* all modifications of the above designations, oppositions and declarations.

#### Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

#### Article 23

The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

#### Article 24

Supplementary agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following –

- a)* the signatures and ratifications referred to in Article 26;
- b)* the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
- c)* the accessions referred to in Article 28 and the dates on which they take effect;
- d)* the extensions referred to in Article 29 and the dates on which they take effect;
- e)* the designations, oppositions and declarations referred to in Article 21;
- f)* the denunciations referred to in the third paragraph of Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

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2014, c. 1, Schedule I.