

# Arbitration and quasi-judicial tribunals: Must corporations and private bodies necessarily be represented by a lawyer?

■ DOMINIQUE VALLIÈRES

While individuals (natural persons) may represent themselves and need not resort to a lawyer before the courts, a legal person or a corporation must necessarily be represented by a lawyer, both pursuant to the *Code of Civil Procedure* (articles 23, 86 and 87) as well as by reason of the acts reserved for lawyers under *an Act respecting the Barreau du Québec* (CQLR c. B-1; see section 128) (hereinafter the "AB").

However, the question has arisen in the past as to whether an individual may represent a legal person or a corporation before a quasi-judicial tribunal, for example the Tribunal Administratif du Québec (hereinafter the "TAQ"), and *inter alia* validly sign and file proceedings with such a body. Two contradictory lines of authority had existed until recently within the ATQ, some adjudicators having answered the question with yes,<sup>1</sup> others with no,<sup>2</sup> and no decision of the Court of Québec (sitting on appeal from the TAQ) or of the superior courts had ever settled the matter.

The controversy had to do mainly with the interpretation to be given to an exception to the acts reserved for lawyers, such exception being set out as follows in section 129(c) AB:

129. None of the provisions of section 128 shall limit or restrict:  
[...]  
(c) the right of public or private bodies to be represented by their officers, except for the purpose of pleading, before any organization having a quasi-judicial function;

In a decision rendered on March 22, 2017,<sup>3</sup> Justice David L. Cameron of the Court of Québec (sitting on appeal from the TAQ) finally settled this matter, namely, to what extent a "private body" may be represented by its officers (rather than by a lawyer) before an organization having a

quasi-judicial function. This is the first decision by the Court of Québec, Appeal Division — and indeed by any superior court — on this issue.

The Court determined that under section 129(c) AB, *supra*, a private body may be represented by its officers before an organization having a quasi-judicial function, including for the signing and filing of proceedings, but not however as concerns the act of pleading. To come to this ruling, the Court had to determine five main issues, being the respective meanings to be given to the terms "represent", "private body", "officer", "pleading" and whether the TAQ is an "organization having a quasi-judicial function". We revisit these issues below, while also summarizing and commenting on the Court's reasoning.

## 1. What is the extent of this right "to be represented"? What are the acts, actions and steps in the process that are included and that may be completed without a lawyer?

The Court adopts a "[TRANSLATION] broad and inclusive approach [to the effect] that the exception is aimed at all steps of representation, from the preparation and drafting stages to when the case is closed (subject to pleading)."<sup>4</sup>

<sup>1</sup> Except as concerns the act of pleading. See, for example, 3639886 *Canada Inc. c. Commission de protection du territoire agricole du Québec et als*, 2002 CanLII 54567 (QCTAQ).

<sup>2</sup> See, for example, *Raven c. Montréal (Ville)*, 2015 QCTAQ 04983.

<sup>3</sup> *Ville de Longueuil c. 9128-2405 Québec Inc.*, 2017 QCCQ 2191. At the time of writing, no appeal had been initiated, but the time limit for appeal had not yet expired. We recommend that the reader follow up on this case or contact us.

<sup>4</sup> *Ville de Longueuil c. 9128-2405 Québec Inc.*, 2017 QCCQ 2191, para. 181.



## 2. What types of entity fall under this exception and are considered "private bodies"?

Being of the opinion that the expression "private body", without further characterization, is the least specific and most generic term that the legislature could have used in this exception to the monopoly conferred by the AB upon lawyers, the Court concludes that "[TRANSLATION] the term "private body" is broad enough to encompass legal persons, partnerships or other bodies that do not possess legal personality, in sum, all entities of a private nature that are not individuals."<sup>5</sup>

## 3. Who may be considered an "officer" of the private body?

Once again, the Court rejects any formalism and points out, for instance, that it would not suffice to base oneself strictly on entries appearing in public registers (for example, in the Québec enterprise register), where the directors of a company are required to be listed.

Instead, the Court decides that the actual roles and responsibilities of the person, in its relation to the entity it wishes to represent, are to be examined in order to establish (or not) the person's status as officer. The Court characterizes the question as one of "[TRANSLATION] mixed fact and law".<sup>6</sup>

## 4. What does the "except for the purpose of pleading" limitation mean?

On this point, the parties were in agreement and the Court notes that "[TRANSLATION] the concept of pleading is very restrictive, meaning the activity of presenting an argument once the evidence is closed in the context of a hearing."<sup>7</sup>

However, the Court goes further and specifies that, in the case at hand, the participation or representation by an officer should have been excluded "[TRANSLATION] merely for the purposes of pleading at law after the clarification of factual matters".<sup>8</sup>

## 5. Is the TAQ an organization having a "quasi-judicial function"?

In the Court's opinion, yes; hence it finds the exception in section 129(c) AB is applicable.<sup>9</sup>

## What is the situation with respect to private arbitration?

"Private" arbitration is recognized as a private dispute prevention and resolution process in article 1 of the *Code of Civil Procedure*, whilst article 4 of the *Code of Civil Procedure* specifies that this dispute prevention and resolution process is confidential. Alternative dispute resolution mechanisms can present certain advantages, including confidentiality, and the legislature encourages parties to resort to them. The same issue is thus likely to arise in the context of private arbitration, seeing as these provisions of the AB are of public order.<sup>10</sup>

Although the Court settles the matter with respect to cases issuing from the TAQ, the result should be identical as far as private arbitration is concerned due to the quasi-judicial function of an arbitrator,<sup>11</sup> based on a combined reading of sections 1 (definition of the word "court"), 128 and 129 AB.

More specifically, subparagraphs 1 to 7 of section 128(2)(a) AB present an exhaustive list of exclusions to the monopoly provided for by section 128(2)(a) to lawyers, which list includes *inter alia* the arbitration of disputes or grievances within the meaning of the *Labour Code*<sup>12</sup> or within the meaning of the *Act respecting labour relations (...)* in the construction industry<sup>13</sup>, but not "private" arbitration recognized as a private dispute prevention and resolution process in article 1 of the *Code of Civil Procedure*. One should therefore conclude that the monopoly created by section 128(2)(a) AB is applicable to private arbitration, as is the exception in section 129(c) AB, which allows a private body to be represented by its officers in this context, except for the purpose of pleading.

### DOMINIQUE VALLIÈRES

514 877-2917

dvalières@lavery.ca

<sup>5</sup> *Id.*, see paragraphs 210-214.

<sup>6</sup> *Id.*, see paragraphs 225-226.

<sup>7</sup> *Id.*, see paragraph 232.

<sup>8</sup> *Id.*, see paragraph 232 in fine.

<sup>9</sup> *Ville de Longueuil c. 9128-2405 Québec Inc.*, 2017 QCCQ 2191, para. 250-251.

<sup>10</sup> *Fortin v. Chrétien*, [2001] 2 S.C.R. 500, p. 516 (para. 21).

<sup>11</sup> *AR Plomberie chauffage inc. c. Institution royale pour l'avancement des sciences*, 2007 QCCS 2998, para. 45; *Maçonnerie Demers inc. c. Lanthier*, J.E. 2002-1335, AZ-50127879 (C.S.), para. 226; Hubert REID, *Dictionnaire de droit québécois et canadien*, 5e éd., Wilson-Lafleur, Montréal, 2015, p. 484 (definition of "pouvoir quasi judiciaire" [quasi-judicial power]). See also, wherein the function of an arbitrator is considered analogous to a judicial function (thus quasi-judicial by nature): *Zittreer c. Sport Maska Inc.*, [1985] C.A. 386, AZ-85011217, para. 54-55, reasons of Justice Lebel, as he then was (reversed by the Supreme Court of Canada but not on this point: [1988] 1 S.C.R. 564), this opinion of Justice Lebel being authoritative, see, for example: *Charbonneau c. Industries A.C. Davie Inc.*, J.E. 89-759 (C.S.), p. 10; *Promutuel Dorchester, société mutuelle d'assurances générales c. Ferland*, J.E. 2001-26, AZ-01021003 (C.S.), p. 6 and footnote 2; Marie-Josée HOGUE et Patrick FERLAND (dir.), *Guide de l'arbitrage*, Lexis Nexis Canada inc., Montréal, 2014, para. 1-8, 1-9 and 1-10.

<sup>12</sup> (CQLR, c. C-27), see paragraph 128(2)(a)[1] AB.

<sup>13</sup> (CQLR, c. R-20), see paragraph 128(2)(a)[6] AB.

**YOU CAN CONTACT THE MEMBERS OF THE COMMERCIAL LITIGATION GROUP WITH ANY QUESTIONS CONCERNING THIS NEWSLETTER.**

FRANÇOIS BÉLANGER	fbelanger@lavery.ca	418 266-3092
FRÉDÉRIC BÉLANGER	fredbelanger@lavery.ca	418 266-3096
CLAUDIA BÉRUBÉ	cberube@lavery.ca	819 346-3661
LAURENCE BICH-CARRIÈRE	lbichcarriere@lavery.ca	514 877-2937
DOMINIC BOISVERT	dboisvert@lavery.ca	514 878-5493
FRÉDÉRIC BRETON	fbreton@lavery.ca	819 346-7506
MYRIAM BRIXI	mbrixi@lavery.ca	514 878-5449
MARIE-HÉLÈNE CANTIN	mhcantin@lavery.ca	819 346-1240
GENEVIÈVE CHAMBERLAND	gchamberland@lavery.ca	819 346-2562
MARIE COSSETTE, Ad. E.	mcossette@lavery.ca	418 266-3073
JULIE COUSINEAU	jcousineau@lavery.ca	514 877-2993
MARIKA COUTURE-HOULE	mcouturehoule@lavery.ca	819 346-0340
EUGÈNE CZOLIJ	eczolij@lavery.ca	514 878-5529
AUDREY-JULIE DALLAIRE	ajdallaire@lavery.ca	819 346-7928
DANIEL DES AULNIERS	ddesaulniers@lavery.ca	418 266-3054
CHARLOTTE FORTIN	cfortin@lavery.ca	418 266-3074
PIER-OLIVIER FRADETTE	pofraclette@lavery.ca	418 266-3058
LÉONIE GAGNÉ	lgagne@lavery.ca	514 878-5409
NICOLAS GAGNON	ngagnon@lavery.ca	514 877-3046
JUSTIN GRAVEL	jgravel@lavery.ca	819 346-2543
JULIE GRONDIN	jgrondin@lavery.ca	514 877-2957
RICHARD A. HINSE	rhinse@lavery.ca	514 877-2902
JONATHAN LACOSTE-JOBIN	jlacostejobin@lavery.ca	514 877-3042
FRÉDÉRIC LAFLAMME	flaflamme@lavery.ca	819 373-1881
CLAUDE LAROSE	clarose@lavery.ca	418 266-3062
SARAH LECLERC	sleclerc@lavery.ca	418 266-3070
JEAN LEGAULT	jlegault@lavery.ca	514 878-5561
GUY LEMAY, CRIA	glemay@lavery.ca	514 877-2966
LÉA MAALOUF	lmaalouf@lavery.ca	514 878-5436
DESPINA MANDILARAS	dmandilaras@lavery.ca	514 877-3067
MARTIN PICHETTE	mpichette@lavery.ca	514 877-3032
BENJAMIN POIRIER	bpoirier@lavery.ca	514 877-2989
PATRICE RACICOT	pracicot@lavery.ca	514 878-5567
LOUIS ROCHETTE, Adm.A.	lrochette@lavery.ca	418 266-3077
IAN ROSE	irose@lavery.ca	514 877-2947
BERNARD ROY	broy@lavery.ca	418 266-3076
ZILA SAVARY	zsavary@lavery.ca	514 871-1522
VÉRONIQUE SAVOIE	vsavoie@lavery.ca	819 373-5497
JEAN-YVES SIMARD	jysimard@lavery.ca	514 877-3039
LUC THIBAudeau	lthibaudeau@lavery.ca	514 877-3044
NICOLAS THIBAUT-BERNIER	nthibaultbernier@lavery.ca	819 346-0341
PHILIPPE TREMBLAY	ptremblay@lavery.ca	514 877-3005
DOMINIQUE VALLIÈRES	dvallieres@lavery.ca	514 877-2917
BRUNO VERDON	bverdon@lavery.ca	514 877-2999
EMIL VIDRASCU	evidrascu@lavery.ca	514 877-3007
YANICK VLASAK	yvlasak@lavery.ca	819 346-3720
JONATHAN WARIN	jwarin@lavery.ca	514 878-5616

© All rights reserved 2017 ► LAVERY, DE BILLY, L.L.P. ► LAWYERS

*Pour recevoir notre bulletin en français, veuillez envoyer un courriel à [info@lavery.ca](mailto:info@lavery.ca).*

This bulletin provides our clients with general comments on recent legal developments. The texts are not legal opinions. Readers should not act solely on the information contained herein.