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

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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,[1] others with no,[2] 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,[3] 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

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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).”[4]

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.”[5]

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”.[6]

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.”[7]

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”.[8]

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.[9]

What is the situation with respect to private arbitration?

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“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.[10]

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,[11] 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*[12] or within the meaning of the *Act respecting labour relations (...) in the construction industry*[13], 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.

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1. 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).
2. See, for example, *Raven* c. *Montréal (Ville)*, 2015 QCTAQ 04983.
3. *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.
4. *Ville de Longueuil* c. *9128-2405 Québec Inc.*, 2017 QCCQ 2191, para. 181.
5. *Id.*, see paragraphs 210-214.
6. *Id.*, see paragraphs 225-226.
7. *Id.*, see paragraph 232.
8. *Id.*, see paragraph 232 in fine.
9. *Ville de Longueuil* c. *9128-2405 Québec Inc.*, 2017 QCCQ 2191, para. 250-251.
10. *Fortin* v. *Chrétien*, [2001] 2 S.C.R. 500, p. 516 (para. 21).
11. *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” [quasijudicial power]). See also, wherein the function of an arbitrator is considered analogous to a judicial function (thus quasi-judicial by nature): *Zittrer* 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.
12. (CQLR, c. C-27), see paragraph 128(2)(a)[1] AB.
13. (CQLR, c. R-20), see paragraph 128(2)(a)[6] AB.

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