

PROCEDURAL BIJURALISM PILOT PROJECT
INFORMATION DOCUMENT FOR THE PARTIES

Pilot project

The procedural bijuralism pilot project allows for the application of the Quebec *Code of Civil Procedure*, C.Q.L.R. c. C-25.01 (*Code*), with the necessary adaptations, in actions before the Federal Court as well as in appeals therefrom before the Federal Court of Appeal.

The pilot project applies only to actions in which all of the parties are represented by a lawyer who is a member of the Barreau du Québec. Each party that wishes to participate in the pilot project must sign the pilot project consent form and file it with the registry.

If a defendant fails to respond to an action, the form may be filed by only the plaintiff, with the result that the default proceeding continues in accordance with the *Code*.

Once the form has been filed with the registry, the proceeding will automatically be part of the pilot project and a case management judge will be designated. The action will be part of the pilot project until the expiry of the deadline to file an appeal from the final judgment of the Federal Court or the date of the final judgment of the Federal Court of Appeal, as the case may be. The Court may, however, for sufficient reasons, or on consent of the parties, remove the action from the pilot project.

Jurisdiction of the Federal Courts

In a number of areas, the Federal Court has concurrent jurisdiction with provincial superior courts. As statutory tribunals, the federal courts derive their jurisdiction from the *Federal Courts Act*, R.S.C. 1985, c. F-7 (*Act*).

The jurisdiction of the Federal Court is defined in sections 17 to 26 of the *Act*; the jurisdiction of the Federal Court of Appeal is defined in sections 27 and 28 of the *Act*.

Conflict between the *Act* and the *Code*

The *Federal Courts Rules*, SOR/98-106 (*Rules*), enacted under the *Act*, give broad discretion to judges and prothonotaries to depart from them. However, no provision makes it possible to depart from the statutory provisions of the *Act*. In the event of a conflict between the *Code* and the *Act*, the *Act* will prevail.

Filing of pleadings

The Federal Courts have national jurisdiction and their judgments can be enforced throughout Canada. Their territorial jurisdiction is not defined or limited by provincial borders or judicial districts. Parties may therefore file pleadings at any registry office in any province or territory in Canada.

Parties are encouraged to file their documents with the registry offices in Montreal, Ottawa and Quebec City. Contact information for the registry offices can be found at <https://www.cas-satj.gc.ca/en/operations/locations.shtml>.

Because the pilot project allows parties to depart from the *Rules* and the forms prescribed therein, all of the documents filed in a proceeding that is part of the pilot project must have “PILOT PROJECT – BIJURALISM QUÉBEC” written in bold in the header of the document. This will avoid any confusion or delay that could result from documents not complying with the *Rules*.

Legal costs

With the exception of registry fees, the legal costs set out in the *Code* apply in the context of the pilot project, unless the parties have agreed otherwise in writing. The registry fees are set out in Tariff A of the *Rules* (<https://laws.justice.gc.ca/eng/regulations/SOR-98-106/page-125.html>).

Special case management

Proceedings that are part of the pilot project will be under special case management. A case management judge, who can be a prothonotary, will be designated to each proceeding, in first instance and in appeal. Case management judges or prothonotaries have broad case management powers that will allow them to, namely, ensure that the provisions of the *Code* can apply, with the necessary adaptations, in the context of the pilot project.

To facilitate the application of the *Code* to actions and appeals before the Federal Courts, any questions concerning the necessary adaptations or concerning an inconsistency between the *Code* and the *Act* will be decided by the case management judge.

Prothonotaries of the Federal Court have much broader powers than special clerks. The vast majority of cases under case management in the Federal Court are managed by prothonotaries. Because prothonotaries will likely be responsible for managing most of the actions that are part of the pilot project, section 12 of the *Act* and sections 50, 51 and 385 of the *Rules*, which establish the jurisdiction of prothonotaries

and the process for appealing the decisions of prothonotaries, will continue to apply in the context of the pilot project.

Appeal from a judgment of the Federal Court

A judgment of a prothonotary may be appealed as of right to a judge of the Federal Court by an application in the course of a proceeding (51 of the *Rules*).

For a judgment rendered by a judge of the Federal Court, including a judgment rendered in respect of an appeal from the judgment of a prothonotary, appeals to the Federal Court of Appeal are governed by subsection 27(1) of the *Act*. Contrary to the provisions of the *Code* relating to appeals, final judgments, judgments on a question of law determined before trial and interlocutory judgments may be appealed as of right.

Time limits

Appeals from a prothonotary's judgment must be filed within 10 days after the day on which the judgment under appeal was rendered and at least four days before the day fixed for the hearing (51(2) of the *Rules*). This time limit may be extended.

An appeal from an interlocutory judgment rendered by a judge of the Federal Court must be brought within 10 days after the pronouncement of the judgment or within any further time that a judge of the Federal Court of Appeal may allow (27(2)(a) of the *Act*).

An appeal from a final judgment or judgment on a question of law made before the trial must be brought within 30 days after the pronouncement of the judgment or within any further time that a judge of the Federal Court of Appeal may allow (27(1) and 27(2)(b) of the *Act*).

Stays of execution of judgments

Contrary to the *Code*, a properly initiated appeal before the Federal Courts does not stay the execution of the judgment. Parties that participate in the pilot project could, if they so desire, ask the case management judge to stay the execution of the judgment in the judgment.