

Newsletter



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Avocats • Lawyers

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Your place or mine?

The traditional social question is also relevant in the context of business relationships: if a dispute arises out of a contract you signed, will you have to travel to the outer limits of the province if it ends up in court?

Selecting where litigation will take place

The costs of litigating a dispute far from your own office could very well force you to abandon an otherwise potentially worthy claim or to settle one where you had good arguments.

While the rules determining the judicial district where a lawsuit can be heard are quite complex, business parties have traditionally relied on one clear technique: writing it down in their contract.

Many agreements therefore contain a clause such as “The parties irrevocably submit all disputes arising out of this Agreement to the courts of the Province of Quebec, sitting in [the judicial district of your business establishment].”

With such a clause, if you have to sue the other party to your contract, you can at least do it in your own backyard.

New rules now apply

The new *Code of Civil Procedure*, in force since January 1, changes those rules. Article 41 provides that “[s]o far as public order permits, the court of the defendant’s elected domicile, or the court designated by an agreement between the parties *other than an adhesion contract*, also has territorial jurisdiction.” [our emphasis]

An adhesion contract cannot therefore dictate where a lawsuit concerning that contract may be heard.

The *Civil Code of Québec* [“CCQ”] defines an adhesion contract as “a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable” (Art. 1379 CCQ).

Adhesion contracts are commonplace; think for example of insurance, financing or franchising agreements, as well as



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any other “standard form” agreement. A franchisor or supplier may no longer specify in his standard agreements that all actions will be taken in his own district.

A solution!

But Article 42 of the *Code of Civil Procedure* also provides a way out of this dilemma. It states that, “[a]t the plaintiff’s option, [...] a demand for the performance of contractual obligations may also be brought before the court of the place where the contract was made [...]”. Since a contract is made “where acceptance is received by the offeror” (art. 1387 CCQ), if you want lawsuits related to a contract to be heard in your own judicial district, you must ensure that the contract is deemed to have been formed there. There are two ways to do this:

- Make sure the closing (the signature of the agreement) occurs in your own district, with all parties present; or

- Make sure that the agreement provides that it is complete upon the last signature, that you are the last party to sign the agreement and that you do so in your own district (and this is clear from the face of the contract).

To sum it up

What should you take away from this discussion?

- If you rely on the terms of your existing contracts to “have the home court advantage”, you could lose this option under the new *Code of Civil Procedure*.
- Changes in the law are frequent and can impact your day-to-day operations in unpredictable ways.

It’s therefore a good idea to periodically ask your legal advisor about upcoming changes that could affect your business.

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