

NATIONAL ASSEMBLY

THIRD SESSION

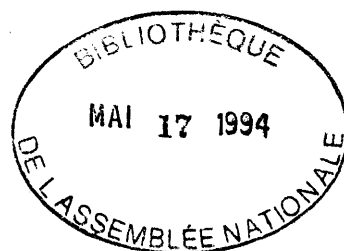
THIRTY-FOURTH LEGISLATURE

Bill 24

An Act to amend the Code of Civil Procedure

Introduction

**Introduced by
Mr Roger Lefebvre
Minister of Justice**



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EXPLANATORY NOTES

This bill amends the Code of Civil Procedure to introduce a new procedure for the communication and filing of exhibits that the parties to any judicial proceeding of a civil nature intend to refer to at the hearing, and to provide for the retrieval and destruction of the exhibits the parties have filed in the record.

To that end, the bill requires the parties to communicate exhibits in their possession to one another, if they intend to refer to them at the hearing, and specifies the procedure by which communication must be effected, taking the specific characteristics of the various judicial remedies into account.

The bill also establishes, as a general principle, that the filing of exhibits in the record takes place at the time of the hearing and it fixes the time as of which the authorization of the court is required to file an exhibit that has not been communicated.

In addition, the bill adds new provisions to the Code of Civil Procedure to require the parties to retrieve their exhibits and fixes the time as of which the clerk will be authorized, unless the chief justice or chief judge decides otherwise, to destroy any exhibit the parties have failed to retrieve.

Lastly, the bill proposes various amendments to the Code of Civil Procedure for concordance purposes, and proposes certain transitional provisions.

Bill 24

An Act to amend the Code of Civil Procedure

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Article 44.1 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting the word “communication,” before the word “filing” in the second line of subparagraph 1 of the first paragraph.

2. Articles 80, 81 and 82 of the said Code are repealed.

3. Article 83 of the said Code is amended by replacing the words “Exhibits filed” in the first line by the words “Prior to the end of the proceedings, filed exhibits”.

4. Article 117 of the said Code is amended by striking out the words “or has been deposited in the office of the court and mention of such deposit is made on the writ or in the declaration” in the third, fourth and fifth lines of the second paragraph.

5. The heading of Chapter II of Title I of Book II of the said Code is amended by replacing the words “EXHIBITS AND THE” by the word “OF”.

6. Article 147 of the said Code is repealed.

7. Article 168 of the said Code, amended by section 233 of chapter 57 of the statutes of 1992, is again amended by replacing the words “the plaintiff file a document alleged in support of his pretensions” in the first and second lines of subparagraph 8 of the first paragraph by the words “an exhibit the plaintiff intends to refer to at the hearing be communicated to him by the plaintiff”.

8. Article 223 of the said Code is amended by replacing the words “produced by him or by the opposite party” in the second line of the first paragraph by the words “that he or the opposite party intends to avail himself of at the hearing or that has already been filed in the record”.

9. Article 227 of the said Code is amended by inserting the words “the document may not be filed at the hearing in the principal suit or, if it has already been filed,” before the word “it” in the second line of the first paragraph.

10. The said Code is amended by inserting, after article 275, the following article:

“275.1 Once the case is inscribed for proof and hearing, either party may file at the office of the court a declaration of inscription on the roll for hearing; notice of the filing must be served on the other parties.”

11. Article 276 of the said Code is amended

(1) by striking out the word “by” in the second line of the first paragraph and by inserting the words “of the declaration of inscription on the roll for hearing and” after the word “and” in the third line of that paragraph;

(2) by replacing the words “, fix the conditions and modalities relating to the filing of the certificate and indicate the documents which must have been filed previously” in the sixth, seventh and eighth lines of the first paragraph by the words “and fix the conditions and procedure for the filing of the certificate”.

12. Article 277 of the said Code is repealed.

13. Article 279 of the said Code is amended by adding, at the end of the first paragraph, the following sentence: “During the conference, the parties must provide access to the original of the exhibits that they have communicated and that they intend to refer to at the hearing.”

14. Article 294.1 of the said Code, amended by section 255 of chapter 57 of the statutes of 1992, is again amended by replacing the first paragraph by the following paragraph:

“294.1 The court may accept as statements those that are admissible under the Book on Evidence of the Civil Code of Québec,

in particular, a medical report, or an employer's report on the state of the salary or other benefits of an employee, in lieu of the testimony of the physician or employer who signed it, provided it has been communicated and filed in the record in accordance with the provisions of Sections I and II of Chapter I.1 of this Title. However, in the case of a motion other than a motion to institute proceedings, a copy of the report must be served on the parties at least 10 days before the date of the hearing, unless the court decides otherwise."

15. Article 312 of the said Code, amended by section 261 of chapter 57 of the statutes of 1992, is again amended by replacing the words "an object" in the second line by the words "any real evidence" and by replacing the word "object" in the fourth line by the words "real evidence".

16. Article 313 of the said Code is amended by replacing the word "object" in the third line by the words "real evidence".

17. The said Code is amended by inserting, after article 331, the following chapter:

"CHAPTER I.1

"EXHIBITS

"SECTION I

"COMMUNICATION OF EXHIBITS

"331.1 A party who intends to refer at the hearing to an exhibit in his possession, whether the exhibit be real evidence or a document, including the whole or an abstract of testimony, an expert's report or any other document referred to in articles 294.1, 398.1, 398.2, 399.2 and 402.1, must communicate it to any other party to the proceedings, in accordance with the provisions of this Section.

"§ 1.—Rules applicable to actions introduced by writ or declaration

"331.2 In proceedings introduced by writ or declaration, the exhibits must be disclosed by way of a notice sent to the parties.

Disclosure is not required if a copy of the exhibits is provided to the parties.

In the case of an exhibit in support of a written proceeding, the notice or the copy, as the case may be, must be attached to the proceeding being served.

“331.3 A party receiving a disclosure notice may make a written request for a copy of or access to the exhibits disclosed. If the request is not complied with within 10 days after it is received, the party having made the request may, by motion, apply to the court to secure compliance with the request.

Where the judgment granting the motion directs a party to provide a copy of or access to the exhibits within a determined period of time and the party fails to comply, the party having presented the motion may, upon expiry of the period of time, obtain the dismissal of the application or defence or the striking of the allegations involved.

“331.4 The time allowed for contestation does not run against a party who has requested a copy of or access to an exhibit in support of a written proceeding filed by another party until the request is complied with.

“331.5 A party who, given the circumstances, cannot reasonably provide a copy of the exhibits to the party making the request is bound to give him access to the exhibits by other means. In case of disagreement between the parties, a judge may be requested to determine a communication procedure and, if expedient, the time limit for communication.

“§ 2.—Rules applicable to actions introduced by motion and applications presented during proceedings

“331.6 In proceedings introduced by motion and in the case of applications presented during the proceedings, communication of exhibits other than real evidence is effected by providing a copy of the exhibits to the parties. Unless otherwise provided, the copy is provided, in the case of the applicant, upon service of the motion and, in other cases, as soon as possible before the motion is presented. Communication of a real evidence is effected by providing access to it upon presentation of the motion.

If circumstances warrant it, a judge may, upon an oral request, determine a different communication procedure and, if expedient, determine the time limit for communication.

“SECTION II

“FILING OF EXHIBITS

“331.7 The parties may file their exhibits in the record only at the time of the hearing. However, where the proceeding is a case inscribed for judgment by the clerk or an application to be heard by the latter or, if there is no hearing, a case inscribed for proof and hearing under article 195, the exhibits must be filed at the office of the court when the case is inscribed or when the application is presented, as the case may be. These provisions apply unless otherwise prescribed in this Code.

The person presiding over a pre-trial conference or assigned to the hearing may, however, require that a copy of the exhibits be provided to him before the hearing.

“331.8 In proceedings introduced by writ or declaration, exhibits filed at the hearing must have been communicated not later than 60 days after service by one of the parties of a notice of the filing of the declaration of inscription on the roll for hearing, failing which exhibits may be filed only with the authorization of the court.

In proceedings introduced by motion and in the case of applications presented during the proceedings, exhibits filed at the hearing must have been communicated in accordance with the provisions of article 331.6, failing which exhibits may be filed only with the authorization of the court.

“SECTION III

“RETRIEVAL AND DESTRUCTION OF EXHIBITS

“331.9 Once proceedings are terminated, the parties must retrieve the exhibits they have filed, failing which the exhibits are destroyed by the clerk one year after the date of the judgment or of the proceeding terminating the proceedings, unless the chief justice or chief judge decides otherwise.

Where a party, on whatever grounds, seeks a remedy against a judgment, the exhibits that have not been retrieved by the parties are destroyed by the clerk one year after the date of the final judgment or of the proceeding terminating the proceedings, unless the chief justice or chief judge decides otherwise.”

18. Article 398.1 of the said Code is amended by replacing the first paragraph by the following paragraph:

“398.1 A party having examined witnesses under article 397 or 398 may file the whole or abstracts only of the depositions taken, provided they have been communicated and filed in the record in accordance with the provisions of Sections I and II of Chapter I.1 of this Title.”

19. Article 398.2 of the said Code is amended by replacing the words “, but in the case of a motion other than a motion to institute proceedings, the notice must be filed in the record and served at least 10 days before the date of the hearing” in the second, third and fourth lines by the words “. However, in the case of a motion other than a motion to institute proceedings, the whole or the abstracts of the depositions that one of the parties intends to file must be served on the other parties at least 10 days before the date of the hearing”.

20. Article 399.2 of the said Code is replaced by the following article:

“399.2 Notwithstanding the provisions contained in Section I of Chapter I.1 of this Title that pertain to the communication of exhibits, in the case of a motion other than a motion to institute proceedings, a copy of the reports must be served on the parties at least 10 days before the date of the hearing, unless the court decides otherwise.”

21. Article 402 of the said Code, amended by section 268 of chapter 57 of the statutes of 1992, is again amended by replacing the word “object” in the second line of the second paragraph by the words “real evidence”.

22. Article 402.1 of the said Code is amended by replacing the first paragraph by the following paragraph:

“402.1 Except with leave of the court, no expert witness may be heard unless his written report has been communicated and filed in the record in accordance with the provisions of Sections I and II of Chapter I.1 of this Title. However, in the case of a motion other than a motion to institute proceedings, a copy of the report must be served on the parties at least 10 days before the date of the hearing, unless the court decides otherwise.”

23. Article 403 of the said Code, amended by section 269 of chapter 57 of the statutes of 1992, is again amended

(1) by replacing the first paragraph by the following paragraph:

“403. After the filing of the defence, a party may, by notice in writing, call upon the opposite party to admit the genuineness or correctness of an exhibit. A copy of the exhibit must be attached to the notice, except in the case of real evidence, in which case the latter must be put at the disposal of the opposite party.”;

(2) by replacing the English text of the second and third paragraphs by the following:

“The genuineness or correctness of the exhibit is deemed admitted unless, within 10 days or such time as the judge may fix, the party called upon to admit its genuineness or correctness serves on the other party a sworn statement denying that the exhibit is genuine or correct, or specifying the reasons why he cannot so admit. However, if the ends of justice so require, the court may, before judgment is rendered, relieve the party of his default.

The unjustified refusal to admit the genuineness or correctness of an exhibit may result in a condemnation to the costs resulting therefrom.”

24. The English text of article 547 of the said Code, amended by section 295 of chapter 57 of the statutes of 1992 and by section 15 of chapter 30 of the statutes of 1993, is again amended by replacing, in the first paragraph, that which precedes subparagraph *a* by the following:

“547. Notwithstanding appeal, provisional execution applies in respect of all the following matters unless, by a decision giving reasons, execution is suspended by the court.”.

25. Article 754.1 of the said Code is amended

(1) by replacing the words “file the affidavits and all the documents they intend to invoke at the proof and hearing and cause them to be served on the adverse party” in the third, fourth and fifth lines of the first paragraph by the words “cause the affidavits and all the documents they intend to refer to at the proof and hearing to be served on the opposite party”;

(2) by striking out the second paragraph.

26. Article 763 of the said Code, replaced by section 367 of chapter 57 of the statutes of 1992, is amended by inserting the words “or in other provisions of this Code applicable to applications introduced by motion” after the word “Title” in the first line of the second paragraph.

27. Article 765 of the said Code, replaced by section 367 of chapter 57 of the statutes of 1992, is amended by striking out the words “together with the documents submitted in support of the application,” in the third and fourth lines.

28. Article 766 of the said Code, replaced by section 367 of chapter 57 of the statutes of 1992, is amended by replacing paragraph 3 by the following paragraph:

“(3) fix, where applicable, the communication procedure and the time limit for communication of the detailed affidavits and the exhibits the parties intend to file;”.

29. Article 769 of the said Code, replaced by section 367 of chapter 57 of the statutes of 1992, is amended by replacing the words “file, within the time fixed by the court, the detailed affidavits and required documents” in the first and second lines by the words “communicate, within the time fixed by the court, the detailed affidavits and required exhibits”.

30. Article 770 of the said Code, replaced by section 367 of chapter 57 of the statutes of 1992, is amended by replacing the words “file, within the time fixed by the court, his contestation together with the detailed affidavits and required documents” in the first, second and third lines by the words “, within the time fixed by the court, file his contestation or communicate his detailed affidavits and required exhibits”.

31. Article 772 of the said Code, replaced by section 367 of chapter 57 of the statutes of 1992, is amended by striking out the words “authorize the production of additional documents, or” in the first and second lines.

32. Article 813.10 of the said Code is amended by striking out the words “and file in the office of the court” in the second and third lines of the second paragraph.

33. Article 813.11 of the said Code is amended by striking out the last sentence.

34. Article 835.2 of the said Code is amended

(1) by striking out the words “and filed” in the second and third lines;

(2) by striking out the last sentence.

35. Article 835.3 of the said Code is amended by striking out the words “and filed” in the fourth line of the first paragraph.

36. Article 944.8 of the said Code is amended by replacing the words “an object in his possession which is of interest to” in the second and third lines by the words “any real evidence in his possession which is connected with”.

37. Article 996 of the said Code is replaced by the following article:

“996. The provisions of Sections I and II of Chapter I.1 of Title V of Book II and any other provision of this Code inconsistent with this Book do not apply to the recovery of small claims.”

38. The provisions of this Act relating to the communication of exhibits and to the filing of exhibits do not apply to proceedings in progress on *(insert here the date that precedes the date of coming into force of this section)*.

39. In proceedings terminated by judgment or other proceeding before *(insert here the date of coming into force of this section)*, exhibits filed in the record which have not been retrieved by the parties may be destroyed by the clerk from *(insert here the date occurring one year after the date of coming into force of this section)*, unless the chief justice or chief judge decides otherwise or unless one of the parties, as of the latter date, is seeking a remedy against the judgment on whatever grounds.

40. The provisions of this Act will come into force on the date or dates fixed by the Government, with the exception of section 24, which comes into force on *(insert here the date of assent to this Act)*.