



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 50

**An Act to amend the Code of Civil
Procedure with respect to the
recovery of small claims**

Introduction

**Introduced by
Mr Gil Rémillard
Minister of Justice**

**Québec Official Publisher
1992**

EXPLANATORY NOTES

The main object of this bill is to increase from \$1 000 to \$3 000 the amount of the claims which may be recovered before the Small Claims Division of the Court of Québec in accordance with Book VIII of the Code of Civil Procedure.

In addition, the bill provides that legal persons having not more than five persons bound to them by way of a contract of employment may avail themselves of the provisions of Book VIII to recover small claims, as creditors.

The bill also provides that the fees payable for the presentation of the motion to institute proceedings and the costs relating to compulsory execution of judgments will, in the future, be determined by regulation. It also introduces a new tariff for the contestation of a motion and provides that the amount of the costs will be determined by regulation.

The bill amends the rule governing representation of a legal person and provides for certain rules relating to the proof of a legal person's admissibility before the Small Claims Division. It also amends certain rules applicable at the time of referral and adjusts those applicable to the awarding of costs by the trial judge.

Finally, the bill introduces a transitional provision in the matter of referrals.

ACTS AMENDED BY THIS BILL:

- Code of Civil Procedure (R.S.Q., chapter C-25)
- Act respecting municipal courts and amending various legislation (1989, chapter 52)

Bill 50

An Act to amend the Code of Civil Procedure with respect to the recovery of small claims

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Article 953 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended

(1) by replacing subparagraph *a* of the first paragraph by the following subparagraph:

“(a) a claim not exceeding \$3 000;”;

(2) by replacing the words “physical person in his own name and on his” in the first line of subparagraph *d* of the first paragraph by the words “natural or legal person in his or its own name and on his or its”;

(3) by replacing the figure “1 000” in the third line of the second paragraph by the figure “3 000”;

(4) by adding, at the end, the following paragraph:

“A legal person may, as creditor, avail itself of the provisions of this book only if, at all times during the 12-month period preceding the application, not more than five persons bound to it by contract of employment were under its direction or control.”

2. Article 956 of the said Code is replaced by the following article:

“956. A natural person who cannot avail himself of this book as a creditor and who is summoned as a debtor, in accordance with this book, must act himself or be represented only by a person bound to him by contract of employment.

A legal person who avails itself of this book as a creditor or who is summoned as a debtor, in accordance with this book, must be represented only by a director, an officer or a person bound to it by contract of employment.”

3. Article 957.1 of the said Code is amended by replacing the figure “1 000”, wherever it appears, by the figure “3 000”.

4. Article 958.1 of the said Code is amended by replacing the last sentence of the first paragraph by the following: “Where the creditor is a legal person, the motion must indicate also that at all times during the 12-month period preceding the application, not more than five persons bound to it by contract of employment were under its direction or control.

The motion is signed by the creditor or his mandatary and must be supported by an affidavit attesting the truth of the facts and the exigibility of the debt.”

5. Article 983 of the said Code is amended by replacing the figure “1 000” in the second line of the first paragraph by the figure “3 000”.

6. Article 984 of the said Code is amended by replacing the second paragraph by the following paragraph:

“Where the application is made by a legal person, it must indicate, in particular, that at all times during the 12-month period preceding the application, not more than five persons bound to it by contract of employment were under its direction or control. The application must be supported by an affidavit attesting the truth of that fact.”

7. The said Code is amended by inserting, after article 984, the following article:

“984.1 The case is continued in accordance with the provisions of this book only if the debtor, where he intends to contest the merits of the creditor’s claim, has deposited the legal costs referred to in article 989.1 with the clerk of the court from which the writ was issued, together with his application. However, if the application is refused, the costs are reimbursed to the debtor.

If the application is accepted, the record is then sent forthwith to the clerk entrusted with the application of this book.”

8. Article 985 of the said Code is amended by replacing

(1) the words “an employee in his sole service” in the third line by the words “a person bound to him by contract of employment”;

(2) the words “an employee in its sole service” in the fourth line by the words “a director, an officer or a person bound to it by contract of employment”.

9. The heading of Title VII of Book VIII of the said Code is replaced by the following heading:

“COSTS AWARDED BY JUDGMENT”.

10. Article 989 of the said Code is replaced by the following article:

“989. The creditor of a small claim must deposit with the clerk or send with his motion the legal costs fixed by regulation of the Government.

If the institution of the action is refused, the sum sent or deposited with the motion is reimbursed to the creditor.”

11. The said Code is amended by inserting, after article 989, the following articles:

“989.1 The debtor of a small claim who notifies the clerk of his intention to contest the merits of the motion in accordance with paragraph *d* of article 962 must deposit with the clerk or send with his notice the legal costs fixed by regulation of the Government.

“989.2 The Government establishes, by regulation, the tariff of legal costs referred to in articles 989 and 989.1. It may prescribe different costs in the tariff, depending on whether they are payable by a natural person or by a legal person.

No proceeding for which costs are payable may be filed in the clerk’s office unless the costs are paid. However, where a person proves that he receives benefits under a last resort assistance program provided for in the Act respecting income security (R.S.Q., chapter S-3.1.1), he is exempted from the payment of such costs.

Each proceeding shall indicate the date on which it is filed and, where applicable, the amount and date of payment of the costs.”

12. Article 991 of the said Code is amended by replacing the words “provided for by article 989 and” in the third line by the words “established in accordance with articles 989 and 989.1, and the amount of”.

13. Article 992 of the said Code is amended by replacing the figure “1 000” in the first line of the first paragraph by the figure “3 000”.

14. Article 993 of the said Code is amended by replacing the first sentence of paragraph 4 by the following sentence:

“(4) The judgment debtor pays, as costs of execution, only the bailiff’s fees and the legal costs fixed by regulation of the Government.”

15. The said Code is amended by inserting, after article 994, the following article:

“**994.1** The Government fixes by regulation the tariff of legal costs to be paid by the judgment debtor in accordance with paragraph 4 of article 993.”

16. Article 997.1 of the said Code is amended by replacing the words “The third paragraph of article 955 applies” in the first line by the words “Articles 955, 956 and 985 apply”.

17. Section 81 of the Act respecting municipal courts and amending various legislation (1989, chapter 52) is amended by replacing the word “A” in the first line by the words “Subject to section 80, a”.

18. No case pending before the Civil Division of the Court of Québec on (*insert here the date of coming into force of this Act*) may be the subject of a referral under Title V of Book VIII of the Code of Civil Procedure except in accordance with the provisions of Book VIII of the said Code, as they read before that date.

19. This Act will come into force on the date fixed by the Government.