



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 93

An Act to amend the Code of Civil Procedure and the Charter of human rights and freedoms

Introduction

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

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EXPLANATORY NOTES

This bill amends the Code of Civil Procedure and, for concordance, the Charter of human rights and freedoms in order to enable journalists to attend proceedings in family matters from which the public is normally excluded.

In addition, the bill amends the Code of Civil Procedure to establish certain rules relating to civil cases under advisement. It provides, in particular, that judgments will have to be rendered within a period of six months, although in exceptional circumstances this period may be extended by the chief justice or judge. The bill also provides that where a judge fails to render judgment within the time prescribed, the chief justice or judge may personally order his removal and refer the case to another judge or re-enter it on the roll. Certain rules applicable to the proof in such situations are also proposed.

Under the bill, the number of days' notice for service and filing of certain motions before the Court of Appeal is increased from one to five.

Amendments are made to the Code in order to place tighter controls on the exercise of the right of appeal, prohibit late filing of documents and render the processing of records before the Court of Appeal of Québec more efficient.

Accordingly, the lower limit of the amount at issue in an appeal is raised and, in the future, no appeal will be allowed from a judgment ruling on a motion to quash a seizure before judgment or a judgment or order rendered in non-contentious matters, other than matters concerning the status and capacity of persons, except with leave of a judge of the Court of Appeal.

The bill also introduces certain measures relating to the filing of or failure to file the factum within the prescribed time. The powers of the clerk of the Court of Appeal are extended in order to improve the operation and efficiency of the court. In certain cases, the clerk

will be authorized to issue a certificate stating that the appeal is abandoned with costs.

Finally, the bill amends the rules applicable to provisional execution, for example, in the case of applications for support or custody of children.

Bill 93

An Act to amend the Code of Civil Procedure and the Charter of human rights and freedoms

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Article 13 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the second paragraph by the following paragraph:

“However, notwithstanding section 23 of the Charter of human rights and freedoms (R.S.Q., chapter C-12), in family matters, sittings in first instance are held *in camera*, unless the court, on motion, orders that a sitting be public in the interests of justice. Any journalist who proves his quality is admitted to sittings held *in camera*, without further formality, unless the court considers his presence prejudicial to a person whose interests may be affected by the proceedings.”

2. Article 26 of the said Code, amended by section 176 of chapter 57 of the statutes of 1992, is again amended

(1) by replacing the figure “\$10 000” in the third line of paragraph 1 by the figure “\$15 000”;

(2) by replacing paragraphs 3 to 8 by the following paragraphs:

“(3) from any final judgment rendered in matters of contempt of court for which there is no other recourse;

“(4) from any judgment or order rendered in matters of adoption;

“(5) from any final judgment rendered in matters concerning confinement in an establishment or psychiatric examination;

“(6) any judgment or order rendered in the following matters:

- (a) changes made to the register of civil status;
- (b) tutorships to minors or absentees and declaratory judgments of death;
- (c) tutorship councils;
- (d) protective supervision of persons of full age and the homologation of a mandate given by a person in anticipation of his incapacity.”;

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

“An appeal also lies, with leave of a judge of the Court of Appeal, when the matter at issue is one which ought to be submitted to the Court of Appeal,

(1) from any judgment or order rendered under the provisions of Book VI of this Code;

(2) from any judgment ruling on a motion to quash a seizure before judgment;

(3) from any judgment or order rendered in matters concerning execution;

(4) from any other final judgment of the Superior Court or the Court of Québec.”

3. Article 27 of the said Code is amended by inserting the words “and of the indemnity referred to in article 1619 of the Civil Code of Québec” after the word “instance” in the third line.

4. Article 28 of the said Code is repealed.

5. Articles 465 and 466 of the said Code are replaced by the following articles:

“465. In any case or matter, of whatever nature it may be, the judgment must be rendered within six months after being taken under advisement. However, the chief justice may, in exceptional circumstances, extend that period.

Where the judge seized of a case or matter fails to render a decision within the six-month period or, as the case may be, within such additional time as is granted under the first paragraph, the chief justice may, on his own initiative or on the motion of one of the parties,

remove the judge from the case or matter and order that it be assigned to another judge or re-entered on the roll.

The chief justice personally exercises the powers and duties conferred on him by this article.

In the first week of each month, the prothonotary must give to the chief justice a list of the cases or matters in his district, of whatever nature they may be, under advisement for more than five months.

“466. The judge called upon to continue a case or matter assigned to him or to hear a case or matter re-entered on the roll pursuant to articles 464 and 465 may, with the consent of the parties, limit the proof to the transcription of the stenographic notes, provided that, where he considers the notes to be insufficient, he recalls a witness or requires any other proof.

He may also, according to circumstances, take any other measure he considers fair and appropriate.”

6. Article 494 of the said Code, amended by section 285 of chapter 57 of the statutes of 1992, is again amended

(1) by striking out the words and figure “paragraph 4 of” in the second line of the first paragraph;

(2) by replacing the word “summary” in the seventh line of the first paragraph by the word “detailed”;

(3) by inserting, after the first paragraph, the following paragraph:

“The detailed statement of the grounds must refer to the documentary evidence or the testimonies in respect of which the appellant claims that the judge in first instance committed a manifest error. It must also state in what way the errors of law or fact found are significant to the point of invalidating the judgment in first instance. Upon presentation of the application, the judge may, where so justified by serious reasons, authorize the filing of an additional statement within the time he determines.”;

(4) by replacing the words and figures “paragraphs 2 and 7” in the second line of the fourth paragraph by the word and figure “paragraph 2”.

7. The said Code is amended by inserting, after article 495, the following articles:

“495.1 Any appeal from a judgment in an action in warranty or in a recursory action must be brought within ten days after receipt of the inscription in appeal from the judgment in the initial proceedings.

“495.2 An appeal is regularly brought only if the appellant or his attorney causes to be served on the adverse party or his attorney and files at the office of the court, within forty-five days after the judgment appealed from or, in the case of an appeal with leave, within fifteen days after the judgment authorizing the appeal, a written statement in which he or his attorney certifies that he has directed a stenographer to transcribe the stenographic notes. The second paragraph of article 495 applies to the service of the statement.”

8. Article 496 of the said Code is amended

(1) by replacing the word “summary” in the fourth line by the word “detailed”;

(2) by adding the following paragraphs:

“The detailed statement of the grounds must refer to the documentary evidence or the testimonies in respect of which the appellant claims that the judge in first instance committed a manifest error. The inscription in appeal must also state in what way the errors of law or fact found are significant to the point of invalidating the judgment in first instance.

Where the appellant is unable to state in detail all the grounds he intends to set up within the time prescribed in article 494, a judge of the Court of Appeal may, on a motion, where so justified by serious reasons, authorize the filing of the detailed statement of grounds within such additional time as he determines.”

9. The said Code is amended by inserting, after article 496, the following article:

“496.1 Unless otherwise provided, every application presented in court must be accompanied with a notice of the date of presentation and must have been served at least five clear juridical days before that date, except in case of urgency, where a judge of the court may reduce that period.”

10. Article 503 of the said Code is amended by replacing the word “seventy-five” in the first line by the words “one hundred and twenty”.

11. The said Code is amended by inserting, after article 503, the following articles:

“503.1 Where the factum is not served and filed within the time prescribed in article 503, the respondent may serve and file, at the office of the court, a default notice summoning the appellant to file his factum or to file a motion within thirty days with one of the judges of the Court of Appeal to explain the delay and obtain an extension.

Where the appellant has not served or filed his factum or has not applied for an extension after the expiry of thirty days following service of the default notice, or where his application has been dismissed, the clerk of the Court of Appeal, upon a verbal request by the respondent and the filing of the proof of service of the default notice, shall record the default and issue a certificate stating that the appeal is abandoned with costs.

“503.2 Where an application for an extension is granted by one of the judges of the Court of Appeal and the additional time has expired without a further extension being granted, and the appellant has not filed his factum within the time fixed by the judge, the respondent may have the default recorded and obtain a certificate from the clerk of the Court of Appeal stating that the appeal is abandoned with costs, without service of a new default notice being required.

“503.3 Notwithstanding articles 503.1 and 503.2, the clerk of the Court of Appeal cannot issue a certificate stating that the appeal is abandoned if the parties or their attorneys have filed at the office of the court a consent signed by them which fixes another date for the filing of the factum.”

12. Article 505 of the said Code is replaced by the following article:

“505. Where the respondent does not file his factum within the time fixed, a judge of the Court of Appeal may, on a motion, grant him additional time in which to file the factum, and may make any appropriate order.

Where the respondent fails to file his factum within the time fixed, the court may refuse to hear him.”

13. Article 547 of the said Code, amended by section 295 of chapter 57 of the statutes of 1992, is again amended

(1) by replacing that part of the first paragraph which precedes subparagraph *a* by the following:

“547. Notwithstanding any appeal, provisional execution may be ordered in any of the following matters unless, by a decision stating reasons, execution is suspended by the court:”;

(2) by striking out subparagraph *i* of the first paragraph;

(3) by replacing the second paragraph by the following paragraph:

“In addition, the court may, upon application, order provisional execution in case of exceptional urgency or for any other special reason, for the whole or for part only of a judgment. In such a case, it may make it conditional upon the furnishing of security.”

14. Article 550 of the said Code is amended

(1) by adding the words “or has been dismissed” after the word “ordered” in the third line of the first paragraph;

(2) by adding the words “or when provided by law” after the word “ordered” in the fourth line of the first paragraph.

15. The third paragraph of section 23 of the Charter of human rights and freedoms (R.S.Q., chapter C-12) is repealed.

16. The provisions of this Act come into force on (*insert here the date of assent to this Act*), except the provisions of sections 2 to 4, 6 to 8 and 10 to 14, which will come into force on the date to be fixed by the Government.