



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 131

**An Act to amend the Code of Civil
Procedure and various legislative
provisions**



Introduction

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

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EXPLANATORY NOTES

This bill proposes legislative amendments concerning the dismissal of frivolous or clearly unfounded actions and proceedings, the use of telephone transmission technology in civil procedure and the collection of support payments.

Specifically, the bill extends the power of the court to impose a penalty, upon the dismissal of a frivolous or clearly unfounded action or proceeding, on the party acting in an improper or dilatory manner and provides for the right to appeal from such a court decision with leave from the Court of Appeal.

Furthermore, the bill authorizes the use of telephone transmission technology for service between attorneys of written proceedings, exhibits and other documents. It also contains provisions dealing with the transmission of such documents by telephone to a bailiff, advocate or notary so that they may then be served according to the existing modes of service or filed in the office of the court.

Finally, the bill amends certain provisions relating to the collection of support payments, thereby allowing the deposit in the office of the court, pursuant to a court order, of the income of a self-employed worker or a person working for an employer who does not reside in Québec, as well as the seizure of retirement pension and disability pension benefits paid by the Régie des rentes du Québec. The bill also provides that a refund due pursuant to a fiscal law to a debtor of support may be applied to the payment of support where the collector of support payments has been charged with collecting the payments.

ACTS AMENDED BY THIS BILL:

- Code of Civil Procedure (R.S.Q., chapter C-25);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);

– Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);

– Act to amend the Code of Civil Procedure in respect of the collection of support payments (1988, chapter 56);

– Act respecting the implementation of the reform of the Civil Code (1992, chapter 57).

Bill 131

An Act to amend the Code of Civil Procedure and various legislative provisions

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Article 26 of the Code of Civil Procedure (R.S.Q., chapter C-25), amended by section 176 of chapter 57 of the statutes of 1992 and by section 2 of chapter 30 of the statutes of 1993, is again amended by replacing subparagraph 4 of the second paragraph by the following subparagraphs:

“(4) from any final judgment dismissing an action or a proceeding on the ground that it is frivolous or clearly unfounded and, where applicable, ordering the payment of damages;

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

2. The said Code is amended by inserting, after article 75.1, the following article:

“**75.2** Where the court dismisses an action or a proceeding that is frivolous or clearly unfounded, it may, on its own initiative or upon application, order the party acting in an improper or dilatory manner to pay damages in compensation for the prejudice suffered by another party if the amount of such damages has been determined; if it has not been determined, the court may suspend the suit for the time and on the conditions it fixes so as to obtain the proof required to determine the amount of the damage.”

3. The said Code is amended by inserting, after article 82, the following article:

“**82.1** A party or his attorney may send a written proceeding, an exhibit or any other document to a bailiff, an advocate or a notary

by fax machine. The correspondent chosen prepares copies of the facsimile of the document and an attestation of their authenticity; the copies are presumed to be originals for the purposes of filing at the office of the court, service and evidence.

The attestation of authenticity must specify that the copies are true to the facsimile received by fax machine and must state the nature of the document, the number of the court, the name of the sender and the fax number of the transmitting fax machine as well as the place, date and time of transmission.

A party who sends a written proceeding, an exhibit or any other document by fax machine must let another party take cognizance of the original at any time after the receipt of a written request to that effect.”

4. Article 124 of the said Code is amended by inserting, after the word “attorney” in the second line the words “or, where applicable, by one of the persons referred to in article 82.1”.

5. The said Code is amended by inserting, after article 140, the following article:

“140.1 Service of a written proceeding, an exhibit or any other document on the attorney of a party may, without the authorization of the judge or clerk, be effected by transmitting to him a facsimile of the proceeding, exhibit or other document by fax machine.”

6. Article 142 of the said Code is amended by adding, at the end, the following paragraph:

“Service by fax machine upon the attorney of a party after four thirty in the afternoon or on a Saturday is deemed to have been made on the following juridical day.”

7. The said Code is amended by inserting, after article 146, the following articles:

“146.01 Service by fax machine may be proved by means of a transmission slip or, failing that, by means of an affidavit from the person who effected the service.

“146.02 A written proceeding, exhibit or other document that is served by fax machine must be accompanied with a transmission slip setting out

(a) the name, address and telephone number of the sender;

(b) the name of the attorney to be served and the fax number of the receiving fax machine;

(c) the date and time of transmission;

(d) the total number of pages transmitted, including the transmission slip;

(e) the fax number of the transmitting fax machine; and

(f) the nature of the document.”

8. The said Code is amended by inserting, after article 625.1, the following article:

“625.2 The provisions of articles 640.1 to 640.4, adapted as required, apply to the seizure by garnishment of the amounts referred to in subparagraphs 4, 6, 7 and 8 of the first paragraph of article 553 and to the seizure by garnishment of benefits payable under a pension plan established by law, for the purpose of executing a judgment awarding support.

The seizure remains binding for a period of one year after the arrears have been paid or for as long as the collector remains charged with the collection of the support payments.”

9. The heading of subdivision 2 preceding article 641 of the said Code is amended by replacing the words “*and Wages*” by the words “, *Wages or Income Replacement Indemnities*”.

10. Article 641 of the said Code is amended

(1) by replacing the words “and wages” in the first line of the first paragraph by the words “, wages or income replacement indemnities”;

(2) by inserting the words “at every pay period, or if pay periods are longer than a month,” after the word “manner” in the fifth line of the second paragraph.

11. Article 647 of the said Code is amended

(1) by replacing the words “demand, if no opposition or claim has been filed” in the third and fourth lines of the first paragraph by the words “written demand, unless an opposition other than an opposition to a seizure for non-payment of support, subject to the second paragraph of article 599, or a claim has been filed”;

(2) by adding, at the end of the second paragraph, the following sentence: “The amounts so collocated form part from that time on of the patrimony of the creditors concerned, unless an opposition has been filed.”;

(3) by striking out the words “every month” in the seventh line of the third paragraph;

(4) by replacing the words “at least once every month” in the second line of the fourth paragraph by the words “after every deposit”.

12. The said Code is amended by inserting, after article 650, the following heading:

“§ 2.1.—*Special rules applicable to certain work income*”.

13. The said Code is amended by inserting, after article 817, the following article:

“**817.0.1** Support awarded by judgment bears interest, by operation of law, at the legal rate from the date on which the payments are due.”

14. Section 31 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended

(1) by replacing subparagraph *b* of the third paragraph by the following subparagraph:

“(b) then, inform the Minister responsible for the administration of the Act contemplated in the regulation of the amount allocated to the debt existing under that Act;”;

(2) by striking out the fifth paragraph.

15. Section 145 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing the first paragraph by the following paragraph:

“**145.** Benefits are unassignable and unseizable except retirement pensions and disability pensions, which are deemed to be the salary of the beneficiary and may be seized for non-payment of support in accordance with the second paragraph of article 553 of the Code of Civil Procedure (R.S.Q., chapter C-25), adapted as required.”

16. The said Act is amended by inserting, after section 145, the following section:

“**145.1** The Board shall withhold the costs prescribed by regulation from the pension it pays to a beneficiary whose retirement or disability pension is seized by garnishment for non-payment of support.”

17. Section 219 of the said Act, amended by section 82 of chapter 15 of the statutes of 1993, is again amended by adding, at the end, the following paragraph:

“(v) prescribing the costs exigible for the carrying out of a seizure by garnishment.”

18. Section 1 of the Act to amend the Code of Civil Procedure in respect of the collection of support payments (1988, chapter 56) is amended

(1) by striking out the words “by deposit or by registration” in the second line of the second paragraph of article 553.5 introduced by it;

(2) by striking out the word “subsequent” after the word “all” in the third line of the first paragraph of article 553.6 introduced by it;

(3) by inserting, after the first paragraph of article 553.6 introduced by it, the following paragraph:

“After obtaining the consent of the creditor, the collector may make an agreement in writing with the debtor as to the terms and conditions of payment of the arrears which takes his financial situation into account. If the debtor fails to comply with the agreement, it becomes null.”;

(4) by replacing, in the French text, the word “Il” preceding the word “peut” in the first line of the second paragraph of article 553.6 introduced by it by the words “Le débiteur”;

(5) by replacing the word “effect” in the fourth line of the first paragraph of article 553.7 introduced by it by the word “demand”;

(6) by inserting, after article 553.7 introduced by it, the following article:

“**553.7.1** The collector of support payments may also avail himself of section 31 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) to collect the arrears due at the time of the creditor’s application and the arrears accrued thereafter as well as the

costs referred to in articles 553.10 and 616. For the purposes of section 31 of the said Act, those amounts are deemed to be amounts owed to the Government.

Where the collector avails himself of the provisions of the first paragraph, he serves a notice of that fact on the debtor by registered or certified mail.

The debtor may, by motion, file an opposition to any payment to the creditor pursuant to this article, within ten days of service on the debtor of the notice provided for in the second paragraph. The opposition must be served on the creditor and the collector by registered or certified mail. The rules governing an opposition to a seizure upon execution apply, adapted as required.

The collector pays the sums collected to the creditor up to the sums due and withholds the amount of the collection costs. If there is a balance, it is remitted to the debtor. Where the debtor has filed an opposition, a judge acting in chambers may, on exceptional grounds, suspend the distribution of the sums collected.”

19. The said Act is amended by inserting, after section 1, the following section:

“**1.1** Article 589 of the said Code is amended by replacing the figure “659.3” in the second line of the second paragraph by the figure “553.7”.

20. Section 312 of the Act respecting the implementation of the reform of the Civil Code (1992, chapter 57) is amended

(1) by replacing the words “of salary for non-payment of support” in the fourth and fifth lines of the first paragraph of article 599 of the said Code by the words “under article 641”;

(2) by inserting, after the first paragraph of article 599 of the said Code, the following paragraph:

“Notwithstanding the first paragraph, service of the motion to oppose a seizure under article 625.2, 640.1 or 641 for the execution of a judgment awarding support does not suspend the distribution of the sums of money seized, unless, on exceptional grounds, a judge acting in chambers orders such distribution suspended.”

21. Section 324 of the said Act is replaced by the following section:

“**324.** Article 651 of the said Code is amended

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

“651. The judge may, upon the motion of a creditor holding an executory judgment, served on the debtor not less than five days before the day fixed for its presentation, order the debtor to appear in person to declare the amount of the work income which he earns as a self-employed worker or which is paid to him by an employer not resident in Québec and order him to deposit in the office of the court a portion of that income determined pursuant to the provisions of article 553.

The provisions of articles 641.1, 641.2 and 642 to 647 apply, adapted as required.”;

(2) by replacing the words “the amount of his remuneration” in the first and second lines of the second paragraph by the words “his work income”;

(3) by replacing the word “remuneration” in the second line of the third paragraph by the words “work income”.

22. The provisions of this Act will come into force on the date or dates fixed by the Government.