NATIONAL ASSEMBLY

Bill 34

An Act to amend the Code of Civil Procedure

Introduction

MAI 20 1987

Introduced by
Mr Herbert Marx
Minister of Justice

EXPLANATORY NOTES

The object of this bill is to amend various provisions of the Code of Civil Procedure in order to allow greater flexibility in its application.

First, the bill provides that a lender of money to secure the performance of an obligation can also be made by entrusting the sum to a trustee.

Also, the provision of the Code allowing a judge of the Superior Court to sit as a judge ad hoc *in the Court of Appeal is made more flexible and precise.*

The bill specifies in what cases writs ordering the sale of seized property may be issued.

Finally, the bill provides that the security under article 65 of the Code can no longer be required in family cases.

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting, after article 189, the following article:

"**189.1** Where a tender of money is made to guarantee the performance of an obligation, the party making the tender may, instead of depositing the sum of money in the office of the court, entrust the sum to a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41).

The trust company shall undertake to remit the sum, where such is the case, to the opposite party upon proof of performance of the obligation. It shall also undertake to invest the sum by making deposits of money within the meaning of the Deposit Insurance Act (R.S.Q., chapter A-26) and guaranteed under that Act, but not including term deposits not repayable at all times before maturity.

The receipt issued by the trust company and the writing attesting the undertakings made by the trust company under the second paragraph must be filed in the record of the court."

2. Article 514 of the said Code is replaced by the following article:

"**514.** To ensure the proper dispatch of business of the Court of Appeal, the Chief Justice or, in his absence, the senior puisne judge may ask in writing the Chief Justice of the Superior Court to designate

one or more judges of that court to sit in the Court of Appeal as judges *ad hoc*. A judge *ad hoc* shall have all the powers and duties of a puisne judge of the Court of Appeal."

3. Article 556 of the said Code is amended

(1) by striking out the words "of *venditioni exponas*" in the third line;

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

"The prothonotary may also issue the last-named writ where the seizure was made before the judgment to be executed was rendered."

4. The said Code is amended by inserting, after article 813.4, the following article:

"**813.4.1** The security contemplated in article 65 shall not be required of a person who has made an application under this title."

5. Article 813.6 of the said Code is amended

(1) by replacing the words "the demand for security for costs or" in the second and third lines of the first paragraph by the word "a";

(2) by striking out the word "demand," in the second line of the second paragraph.

6. In cases pending on (*insert here the date of assent to this Act*), a party having deposited a sum of money under article 189 of the Code of Civil Procedure to guarantee the performance of an obligation may, with the authorization of the court and according to the modalities it determines, withdraw the sum in order to deposit it again in accordance with article 189.1 of the said Code.

7. This Act comes into force on (*insert here the date of assent to this Act*).