NATIONAL ASSEMBLY

FOURTH SESSION THIRTY-SECOND LEGISLATURE

Bill 83

An Act to amend the Code of Civil Procedure and other legislation

Introduction

Introduced by
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Minister of Justice

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EXPLANATORY NOTES

The main object of this bill is to amend the Code of Civil Procedure so as to reduce the delays attendant on hearings, particularly in Superior Court. It amends the Code, firstly, to increase the jurisdiction of the Provincial Court from $10 000 to $15 000, although the appeal threshold to the Appeal Court by operation of law will remain at $10 000. Further, it specifies the content of the rules of practice concerning the procedure for inscribing cases on the roll and modifies, in keeping with those rules, the time limit for filing documents. Next, for the hearing of certain applications for provisional measures in matters of family law, it introduces a mode of proof that favours written proof. Finally, it provides that the pre-trial may be presided over by a retired judge or an advocate with at least ten years' relevant legal experience.

The same Code is further amended by this bill to increase the maximum amount of small claims from $800 to $1 000 and to allow the parties to be represented by advocates, by way of exception, where a case before the Small Claims Division raises a complex question on a point of law.

This bill also amends the Civil Code with regard to matters of proof, to take account of the increased jurisdiction of the Small Claims Division. In addition, it amends the Courts of Justice Act to increase the number of Superior Court judges in the Montréal judicial district from 71 to 78. Finally, it amends the Bills of Lading Act as it regards notices of sale at auction of property in stock transferred as security and in respect of the hours when notices of rights granted under that Act may be registered.

ACTS AMENDED BY THIS BILL

— Civil Code

— Code of Civil Procedure (R.S.Q., chapter C-25)

— Bills of Lading Act (R.S.Q., chapter C-53)

— Courts of Justice Act (R.S.Q., chapter T-16)

Bill 83

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CODE OF CIVIL PROCEDURE

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

"The rules of practice may determine the conditions and modalities relating to sittings *in camera* in respect of advocates and articled students within the meaning of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1)."

2. Article 26 of the said Code is amended by replacing paragraph 1 by the following paragraph:

"(1) from any final judgment of the Superior Court or the Provincial Court, except in a case where the value of the object of the dispute in appeal is less than $10 000;".

3. Article 34 of the said Code is amended by replacing the words "ten thousand dollars" in subparagraphs 1, 2 and 3 of the first paragraph by the following: "$15 000".

4. The said Code is amended by inserting, after article 75, the following:

"CHAPTER III.1

"CLEARLY UNFOUNDED OR FRIVOLOUS ACTIONS AND PROCEEDINGS

"**75.1** At any stage of proceedings, the Court, on a motion, may dismiss an action or a proceeding if the examination held pursuant to this Code shows that the action or proceeding is frivolous or clearly unfounded, on a ground other than those provided in article 165, or if the party who instituted the action or filed the proceeding refuses to have such examination.

If the proceeding dismissed under the first paragraph is a defence, the defendant is foreclosed from pleading."

5. Article 177 of the said Code is repealed.

6. Article 214 of the said Code is amended

(1) by striking out the words "proof and" in the third line;

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

"Notwithstanding the foregoing, where the rules of practice require the filing of a certificate of readiness, the case, even after being inscribed, cannot be inscribed on the roll for hearing before such a certificate has been filed attesting that the case, taking the intervention into account, is ready for hearing."

7. Article 222 of the said Code is replaced by the following article:

"**222.** Unless the court decides otherwise, the principal action and the action in warranty must be heard jointly, and a single judgment decides them both."

8. Article 270 of the said Code is replaced by the following article:

"**270.** Two or more actions between the same parties, brought and inscribed before the same court, in which the questions are substantially the same or for matters which might properly be combined in one action, may be consolidated by order of the court, upon such terms as are deemed proper and provided that, where the rules of practice require the filing of a certificate of readiness, the certificate has been filed.»

9. Article 271 of the said Code is replaced by the following article:

"**271.** The court may also order that several actions instituted before it, whether or not involving the same parties, be tried at the same time and decided on the same evidence; it may also order that the evidence in one be used in another or that one be tried and decided first and the others meanwhile stayed.

Where the rules of practice require the filing of a certificate of readiness, the order of the court shall regard only those actions for which the certificate has been filed. »

10. Article 276 of the said Code is amended by replacing the first paragraph by the following paragraph:

"**276.** Rolls for hearing for each judicial district are prepared under the directions of the chief justice by taking into account the date of the institution of the suit and, as the case may be, the rules of practice.

The rules of practice may require the filing of a certificate of readiness attesting that the case is ready for proof and hearing, fix the conditions and modalities relating to the filing of the certificate and indicate the documents which must have been filed previously."

11. Article 279 of the said Code is replaced by the following article:

"**279.** After a case has been inscribed, the judge assigned to hear it, or any other judge designated by the chief justice, if he believes it useful or if he is so requested, invites the attorneys to discuss appropriate means to simplify the suit and to shorten the hearing, including the advisability of amendments to the pleadings, of defining the questions of law and fact really in controversy, of admitting some fact or document and of providing the list of authorities they intend to submit.

The conference may also be called and presided over by a person designated by the chief justice who is a retired judge or an advocate with at least 10 years of practice. Years in which a person acquired relevant legal experience may be considered by the chief justice to be years of practice.

The agreements and decisions made at such conference are recorded in minutes signed by the attorneys and countersigned by the person who presided over the pre-trial and, as far as they go, govern the hearing before the trial judge, unless he permits a derogation therefrom to prevent an injustice."

12. Article 294.1 of the said Code is amended by replacing the first paragraph by the following paragraph:

"**294.1** The court may accept 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, unless the court decides otherwise, that the report has been filed in the office of the court, with notice and copy served upon the parties, within the time and according to the conditions and modalities prescribed by the rules of practice. However, in the case of a motion,

the report must be filed in the office of the court, with notice and copy served upon the parties, not less than 10 days before the date of the hearing."

13. Article 397 of the said Code is amended

(1) by striking out the word "and" at the end of subparagraph 1 of the first paragraph;

(2) by striking out the word "and" at the end of subparagraph 2 of the first paragraph;

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

"(4) with the permission of the court and on such conditions as it may determine, any other person.";

(4) by replacing the words "or prothonotary" in the last line of the second paragraph by the following: ", prothonotary or, in the case referred to in subparagraph 4 of the first paragraph, the court".

14. Article 398 of the said Code is amended

(1) by striking out the word "and" at the end of subparagraph 2 of the first paragraph;

(2) by inserting, after subparagraph 2 of the first paragraph, the following subparagraph:

"(3) with the permission of the court and on such conditions as it may determine, any other person.";

(3) by inserting, after the word "judge" in the first line of the second paragraph, the following: "or, in the case referred to in subparagraph 3 of the first paragraph, the court".

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

"**398.1** The party having examined witnesses under article 397 or 398 may file in the record the whole or only abstracts of the depositions taken. If he elects to file them, he must do so within the time and according to the conditions and modalities set down in the rules of practice, unless the court decides otherwise. He shall also, by notice served within the same time, indicate to the other parties what he has filed in the record."

16. The said Code is amended by inserting, after article 398.1, the following article:

"**398.2** Article 398.1 applies also in the case of an examination made under article 93, but in the case of a motion, the notice must be filed in the record and served at least 10 days before the date of the hearing."

17. The said Code is amended by inserting, after article 399.1, the following article:

"**399.2** Unless the court decides otherwise, the reports of medical examinations must be filed in the office of the court within the time and according to the conditions and modalities prescribed by the rules of practice. However, in the case of a motion, the reports must be filed in the office of the court, with notice and copy served upon the parties, at least 10 days before the date of the hearing."

18. Article 402.1 of the said Code is replaced by the following article:

"**402.1** Except with the permission of the court, no expert witness may be heard unless his written report is filed in the office of the court, with notice and copy served upon the parties, within the time and according to the conditions and modalities prescribed by the rules of practice. However, in the case of a motion, the report must be filed in the office of the court, with notice and copy served upon the parties, at least 10 days before the date of the hearing.

The filing in the record of the whole or extracts only of the out of court testimony of an expert witness may stand in lieu of his written report."

19. Article 475 of the said Code is amended by replacing the second paragraph by the following paragraph:

"Such correction may be made of the judge's or prothonotary's own motion so long as the execution has not been commenced; it may be made on motion of one of the parties at any time, unless the judgment has been appealed."

20. Article 813.8 of the said Code is amended by inserting, after the words "in the case of" in the second line of the second paragraph, the words "an application for".

21. Article 813.9 of the said Code is amended by adding, after the second paragraph, the following paragraph:

"This article does not apply to an application for provisional measures."

22. The said Code is amended by inserting, after article 813.9, the following articles:

"**813.10** The parties to an application for provisional measures shall make their proof by means of affidavits sufficiently detailed to establish all the facts in support of their claims.

The parties shall, as soon as possible before the presentation of the motion, cause to be served upon the other party and file in the office of the court the affidavits and all documents they intend to invoke at the hearing of the application. However, the applicant shall cause his affidavits to be served at the same time as the motion.

"**813.11** In addition to evidence by affidavit, a party may, if he wishes, present oral evidence. However, oral evidence may be presented only with the permission of the court where the provisional measure in question does not relate to the custody, supervision or education of children. Furthermore, with the permission of the court, the parties may file documents at the hearing.

"**813.12** Upon the presentation of an application for provisional measures, the court shall hear the parties if the record is complete. If it is not, the court shall fix the date of the hearing and make all the orders necessary to safeguard the rights of the parties for such time and on such conditions as it determines.

"**813.13** The application for provisional measures is contested orally unless the court permits it to be contested in writing, within the time and on the conditions it fixes."

23. Article 953 of the said Code is amended by replacing paragraph *a* by the following paragraph:

"(*a*) a claim not exceeding $1 000;".

24. Article 955 of the said Code is amended by inserting, in the first line of the third paragraph, after the word "advocate", the following: ", subject to article 977.1,".

25. Article 957.1 of the said Code is amended

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

"**957.1** No person may, to avail himself of this book, divide, directly or indirectly, a claim exceeding $1 000 into so many claims not exceeding $1 000.";

(2) by replacing subparagraph *a* of the third paragraph by the following subparagraph:

"(*a*) which has been voluntarily reduced by the creditor to an amount not exceeding $1 000;".

26. The said Code is amended by inserting, after article 977, the following article:

"**977.1** Exceptionally, when a case raises a complex question on a point of law, the judge, of his own motion or on the motion of a party but with the agreement of the chief judge of the Provincial Court, may allow the parties to be represented by advocates.

The fees and costs of advocates shall not be claimed from the parties. They are at the charge of the Minister of Justice and shall not exceed those prescribed by the tariff of fees established by the Government under the Legal Aid Act (R.S.Q., chapter A-14)."

27. Article 983 of the said Code is amended by replacing the words "eight hundred dollars" in the second line of the first paragraph by the following: "$1 000".

28. Article 992 of the said Code is amended by replacing the first paragraph by the following paragraph:

"**992.** In any action the amount of which does not exceed $1 000 and which is not instituted in accordance with this book, the defendant who has been condemned by default to appear or to plead when he would have been permitted to avail himself of article 983 must reimburse the costs of the plaintiff."

CIVIL CODE

29. Article 1233 of the Civil Code, amended by section 2 of chapter 86 of the statutes of 1971, section 8 of chapter 74 of the statutes of 1973, section 87 of chapter 83 of the statutes of 1975, section 45 of chapter 73 of the statutes of 1977 and section 60 of chapter 32 of the statutes of 1982, is again amended by replacing subparagraph 2 of the first paragraph by the following subparagraph:

"2. In all matters in which the principal sum of money or value in question does not exceed $1 000;".

30. Article 1235 of the said Code, amended by section 5 of chapter 68 of the statutes of 1972, section 88 of chapter 83 of the statutes of 1975, section 46 of chapter 73 of the statutes of 1977 and section 61 of chapter 32 of the statutes of 1982, is again amended by replacing the words "eight hundred dollars" in the first paragraph by the following: "$1 000".

31. Article 1236 of the said Code, amended by section 6 of chapter 68 of the statutes of 1972 and replaced by section 89 of chapter 83 of the statutes of 1975, section 47 of chapter 73 of the statutes of 1977 and section 62 of chapter 32 of the statutes of 1982, is again replaced by the following article:

"**1236.** In any action for the recovery of a sum which does not exceed $1 000, proof by testimony cannot be received if such sum be a balance or make part of a debt under a contract which cannot be proved by testimony.

The creditor may nevertheless prove by testimony a promise made by the debtor to pay such balance, when it does not exceed $1 000."

32. Article 1237 of the said Code, amended by section 7 of chapter 68 of the statutes of 1972 and replaced by section 90 of chapter 83 of the statutes of 1975, section 48 of chapter 73 of the statutes of 1977 and section 63 of chapter 32 of the statutes of 1982, is again replaced by the following section:

"**1237.** If in the same action several sums be demanded which united form a sum exceeding $1 000, proof by testimony may be received if the debts have arisen from different causes or have been contracted at different times and each was originally for a sum less than $1 000."

BILLS OF LADING ACT

33. Section 39 of the Bills of Lading Act (R.S.Q., chapter C-53), enacted by section 2 of chapter 55 of the statutes of 1982, is amended by adding, at the end, the following: "although he is not required, in the case of publication of the notice in a newspaper, to request a judge or prothonotary to designate the newspaper."

34. Section 47 of the said Act, enacted by section 2 of chapter 55 of the statutes of 1982, is amended by adding, at the end, the following words: ", on juridical days, except Saturdays, at the hours the Minister of Justice fixes by order."

35. Section 48 of the said Act, enacted by section 2 of chapter 55 of the statutes of 1982, is amended by adding, at the end, the following paragraph:

"The notice shall be presented at a time when an entry in the register may be made."

COURTS OF JUSTICE ACT

36. Section 21 of the Courts of Justice Act (R.S.Q., chapter T-16) is amended by replacing the first paragraph by the following paragraph:

"**21.** The Superior Court, which is a court of record, is composed of one hundred and twenty-six judges including a Chief Justice, a Senior Associate Chief Justice and an Associate Chief Justice."

37. Section 32 of the said Act is amended by replacing the figure "seventy-one" in the second line of the first paragraph of subparagraph 1 by the figure "seventy-eight".

TRANSITIONAL AND FINAL PROVISIONS

38. Section 2 applies to cases pending on the date of its coming into force but not to judgments that have already been rendered on that date and for which the time for appeal has not expired.

39. A case brought before the Superior Court, the hearing of which has not commenced on the date of the coming into force of section 3 and which by the said section becomes within the jurisdiction of the Provincial Court is, on that date, referred to that court to be heard and decided as if it had been instituted before that court and as if all the interlocutory judgments had been rendered in that court.

From that date, the Superior Court no longer has jurisdiction over those cases. The prothonotary shall transmit the record of the case to the clerk of the Provincial Court and the court shall give notice to the parties or their attorneys and shall give them the number it assigns to the case as soon as it receives the file.

40. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

41. This Act comes into force on the date fixed by proclamation of the Government, except the provisions excluded by the proclamation, which will come into force on such later dates as are fixed by proclamation of the Government, and except sections 33, 34 and 35, which will come into force on the day of coming into force of sections 39, 47 and 48, respectively, of the Bills of Lading Act.