CHAPTER 30

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

[*Assented to 15 June 1993*]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. C-25, a. 13, am.

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

c. C-25, a. 26, am.

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) from 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."

c. C-25, a. 27, am.

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.

c. C-25, a. 28, repealed

4. Article 28 of the said Code is repealed.

c. C-25, aa. 465 and 466, replaced

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

"**465.** In any case or matter of whatever nature, the judgment must be rendered within six months after being taken under advisement. However, the chief justice or judge may extend that period.

Where the judge seized of a case or matter fails to render a judgment within six months or, as the case may be, within such

additional time as is granted under the first paragraph, the chief justice or judge may, on his own initiative or on a motion by one of the parties, remove the case or matter from the judge and order that it be assigned to another judge or re-entered on the roll.

Before granting an extension or removing a case or matter from the judge who failed to render a judgment within the time prescribed, the chief justice or judge shall take account of the circumstances and of the interests of the parties.

The chief justice or judge or, at his request, the senior associate chief justice or judge shall exercise, personally, the powers and duties conferred on the chief justice or judge by this article.

In the first week of each month, the prothonotary must give to the chief justice or judge a list of the cases or matters in his district, of whatever nature they may be, which have been 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 shall rule on the costs, including those relating to the original inquiry and hearing, according to circumstances, and may, in addition, take any other measure he considers fair and appropriate. Where, for the purposes of the first paragraph, the stenographic notes must be transcribed, the transcription costs shall be paid by the Government unless the judge orders otherwise, in particular, when the recourse is manifestly unfounded, frivolous or excessive."

c. C-25, a. 494, am.

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

(1) by replacing the word and figure "paragraph 4" in the second line of the first paragraph by the words "the second 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".

c. C-25, aa. 495.1 and 495.2, added

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

"**495.1** Without prejudice to the right to appeal in the manner and within the time prescribed by articles 494, 495 and 495.2, any appeal from a judgment in an action in warranty or in a recursory action must be brought, in the manner prescribed by articles 494, 495 and 495.2, within 10 days from the filing, at the office of the court of first instance, of the judgment authorizing the appeal from the judgment in the initial action or of the inscription in appeal from the judgment in the initial action.

"**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."

c. C-25, a. 496, am.

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. 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.

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 an additional statement within such time as he determines."

c. C-25, a. 496.1, added

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."

c. C-25, a. 497, am.

10. Article 497 of the said Code is amended by inserting the words "and where so provided by law" after the word "ordered" in the first line of the first paragraph.

c. C-25, a. 500, am.

11. Article 500 of the said Code is amended

(1) by replacing the words and figures "delay provided by articles 494 and 495" in the second line by the words and figures "time limit prescribed by articles 494, 495 and 495.2";

(2) by replacing the word "summary" in the eighth line by the word "detailed".

c. C-25, a. 503, am.

12. 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".

c. C-25, aa. 503.1-503.3, added

13. 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."

c. C-25, a. 505, replaced

14. 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."

c. C-25, a. 547, am.

15. 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 paragraphs:

"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 the cases provided for in this article, the court may, upon application, make provisional execution conditional upon the furnishing of security."

c. C-25, a. 550, am.

16. 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.

c. C-12, s. 23, am.

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

Applicability

18. The provisions of sections 2 to 4 apply to cases pending in first instance on the date on which these provisions come into force, but they do not apply to judgments already rendered on that date if the periods for appeal have not expired.

Coming into force

19. The provisions of this Act come into force on 15 June 1993, except the provisions of sections 2 to 4, 6 to 8, 10 to 16 and 18, which will come into force on the date to be fixed by the Government.