

NATIONAL ASSEMBLY
Thirty-fourth Legislature, second session

1993, chapter 72
**AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE
AND VARIOUS LEGISLATIVE PROVISIONS**

Bill 131

Introduced by Mr Gil Rémillard, Minister of Justice

Introduced 11 November 1993

Passage in principle 1 December 1993

Passage 15 December 1993

Assented to 17 December 1993

Coming into force: on the date or dates fixed by the Government, except the provisions of sections 1 to 9, paragraph 1 of section 11 and sections 12, 13, 22 and 23 which will come into force on 1 January 1994

Acts amended:

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)





CHAPTER 72

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

[Assented to 17 December 1993]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

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

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 judgment rendered under article 75.2;

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

c. C-25,
a. 75.2,
added

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

“75.2 Where pursuant to article 75.1 the court dismisses a frivolous or clearly unfounded action or proceeding, it may, upon application, declare the action or proceeding excessive or dilatory. In that case, the court may order the unsuccessful party to pay damages in compensation for the prejudice suffered by another party if the amount thereof has been determined.

Where, at the time of the judgment, the amount has not been determined or where it exceeds the monetary jurisdiction of the court, the latter may reserve, for the period of time and on the conditions it determines, the right of the party to apply by motion to the competent court to claim the amount of the damages. The motion forms part of the initial record.”

c. C-25,
a. 82.1,
added

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. If the sender refuses or neglects to do so, the other party may, by motion, apply to the judge or the court to order the sender to produce the original within a specified time.”

c. C-25,
a. 124, am.

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”.

c. C-25,
a. 140.1,
added

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.”

c. C-25,
a. 142, am.

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.”

c. C-25,
aa. 146.01
and 146.02,
added

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.”

c. C-25,
a. 466, am.

8. Article 466 of the said Code, replaced by section 5 of chapter 30 of the statutes of 1993, is amended by replacing the words “, frivolous or excessive” in the seventh line of the second paragraph by the words “or frivolous and excessive or dilatory”.

c. C-25,
a. 634, am.

9. Article 634 of the said Code is amended

(1) by replacing the words “make a declaration” in the first line of the first paragraph by the words and figure “declare or deposit pursuant to article 641”;

(2) by replacing the words “make his declaration at any time, even after judgment, upon payment” in the first and second lines of the third paragraph by the words “declare or deposit at any time, even after judgment, upon payment of the sums he should have withheld and deposited since the service of the writ of seizure and”.

c. C-25,
a. 641, am.

10. Article 641 of the said Code is amended 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.

c. C-25,
a. 647, am.

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”.

c. C-25,
Book IV,
Title II,
Chap. IV,
Sect. II,
subsect. 2.1,
heading,
added
c. C-25,
a. 651.1,
added

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

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

13. The said Code is amended by inserting, after article 651, the following article:

“651.1 The provisions of articles 641 to 647, adapted as required, apply to the execution of a judgment awarding support by way of the seizure by garnishment of the amounts referred to in subparagraphs 4, 6, 7 and 8 of the first paragraph of article 553 and of the periodic benefits granted under an Act in respect of a retirement plan or a compensation plan.”

c. C-25,
a. 659.7,
am.

14. Article 659.7 of the said Code, amended by section 8 of chapter 56 of the statutes of 1988, is again amended by replacing the words “at least once a month” in the second and third lines by the words “after each deposit”.

c. C-25,
a. 817.0.1,
added

15. 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.”

c. M-31,
s. 31, am.

16. 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.

c. R-9,
s. 145, am.

17. 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:

Unassigna-
bility and
unseizability

“**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.”

c. R-9,
s. 145.1,
added

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

Withholding
of costs

“**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.”

c. R-9,
s. 219, am.

19. 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.”

1988, c. 56,
s. 1, am.

20. 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:

“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. The agreement is subject to approval by the creditor. 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; service may be effected 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.”

1988, c. 56,
s. 1.1,
added

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

c. C-25,
a. 589, am.

“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”.

1992, c. 57,
s. 312, am.

22. 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 640.1, 641 or 651.1 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.”

1992, c. 57,
s. 324,
replaced

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

c. C-25,
a. 651, am.

“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”.

Coming into
force

24. The provisions of this Act will come into force on the date or dates fixed by the Government, except the provisions of sections 1 to 9, paragraph 1 of section 11 and sections 12, 13, 22 and 23 which will come into force on 1 January 1994.