



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 31

(1999, chapter 46)

An Act to amend the Code of Civil Procedure

Introduced 4 May 1999

Passage in principle 18 May 1999

Passage 2 November 1999

Assented to 5 November 1999

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EXPLANATORY NOTES

This bill amending the Code of Civil Procedure introduces more flexibility into the appeal procedure, particularly as concerns the competence of a judge of the Court of Appeal sitting alone, the competence of the clerk of the Court, the replacement of factums by written arguments in family matters and the possibility of producing factums in computerized form.

The manner of proceeding by way of a motion in family matters is also modified. Specifically, the presentation of evidence by means of detailed affidavits will no longer be the general rule, and parties will be able, at their option, to file detailed affidavits or to present oral evidence without having to be so authorized by the court. According to the new procedure, applicable to all motions concerning the obligation of support and the custody of children, parties will be allowed to present their evidence by means of a single affidavit sufficiently detailed to establish all facts in support of their claims. The applicant will be permitted to file one additional detailed affidavit as a reply. Moreover, on presentation of a motion, the judge is to be given greater latitude in the management of the case, particularly as regards the use of means to simplify or speed up the procedure and shorten the hearing.

A number of technical, consequential and terminological amendments to the Code of Civil Procedure are also contained in the bill.

LEGISLATION AMENDED BY THIS BILL :

- Code of Civil Procedure (R.S.Q., chapter C-25) ;
- Act to institute, under the Code of Civil Procedure, pre-hearing mediation in family law cases and to amend other provisions of the Code (1997, chapter 42).

Bill 31

AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Article 26 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by adding the following paragraph at the end :

“An appeal also lies, with leave of a judge of the Court of Appeal, where the interests of justice so require, from a judgment dismissing an application for evocation or revision under article 846.”

2. Article 119 of the said Code is amended by adding the following sentence at the end of the second paragraph: “In the case of a claim not exceeding \$3,000, the notice must also contain the text appearing in Schedule 4.”

3. Article 123 of the said Code, amended by paragraph 8 of section 56 of chapter 40 of the statutes of 1999, is again amended by replacing “upon him at his business establishment” in the fourth paragraph by “by leaving a copy of the proceeding in a sealed envelope addressed to the person for whom it is intended at the person’s business establishment or place of work”.

4. Article 274 of the said Code is amended by adding the following paragraph at the end :

“Except where exempted for valid cause, each party must file at the office of the court, according to the procedure set out in the rules of practice, a list of witnesses and the subject of their testimony; the list must be served on the other parties.”

5. Article 275.1 of the said Code is repealed.

6. Article 294.1 of the said Code is amended

(1) by inserting “a psychological or psychosocial report” after “medical report,” in the second and third lines of the first paragraph;

(2) by inserting “, expert” after “physician” in the fourth line of the first paragraph and in the first line of the second paragraph.

7. Article 398.2 of the said Code is amended by inserting “, except an examination concerning a detailed affidavit filed in a family matter” after “article 93”.

8. Article 481.1 of the said Code is amended by striking out “of lease,” in subparagraph *c* of the second paragraph.

9. Article 507 of the said Code is amended by adding the following sentence at the end of the third paragraph: “They may be prepared and filed in computerized form in whole or in part provided it is agreed by all parties and authorized by a judge of the Court of Appeal.”

10. The said Code is amended by inserting the following article after article 507:

“507.0.1. In family matters, written arguments, instead of factums, are filed by the parties together with the other documents relevant to the appeal, according to the procedure prescribed by the Rules of practice of the Court of Appeal in civil matters. The date and time of the appeal hearing are determined by the judge or the clerk, and a schedule for the filing of the arguments and other documents is determined with the parties by the judge or the clerk.

However, a judge of the Court of Appeal may order that the appeal be conducted according to the ordinary rules if, in the judge’s opinion, it is warranted by the complexity of the case or by special circumstances.”

11. Article 509 of the said Code is replaced by the following articles:

“509. In appeal, a judge hears all incidental proceedings provided for in Title IV of Book II to the extent that they are applicable.

In exceptional circumstances, the Court may, if the interests of justice so require, allow a party to adduce, in such manner as the Court directs, indispensable new evidence.

Applications under this article are presented by motion, and the procedure is the same as in first instance, in the absence of rules of practice to the contrary.

During the hearing of such an application, any party may submit relevant evidence, and the judge or the Court, as the case may be, may return the case to the court of first instance so that further proof relating to the application may be made.

If, in the judge’s opinion, the interests of justice so require, the judge may refer an application to the Court.

“509.1. The clerk of the Court of Appeal may hear motions to cease representing a party and attorney substitution motions as well as motions provided for in articles 496, 503.1 and 505.

If, in the clerk’s opinion, the interests of justice so require, the clerk may refer a motion to a judge.

A decision rendered by the clerk may be revised by a judge, upon an application setting out the grounds relied on, served upon the adverse party and filed at the office of the court within ten days from the date of the decision. If the decision is quashed, matters are restored to the state in which they were before it was rendered.”

12. Article 523 of the said Code is amended

(1) by striking out the first paragraph ;

(2) by replacing “It has” at the beginning of the second paragraph by “The Court of Appeal has”.

13. Article 565 of the said Code is amended by replacing “48 hours” in the second paragraph by “two clear juridical days”.

14. Articles 813.8 to 813.13 of the said Code are replaced by the following articles :

“813.8. All applications introduced by way of a motion are governed by the special rules contained in this subsection.

“813.9. A motion must be supported by an affidavit attesting the truth of the facts alleged and be accompanied with a notice to the other party of the date of presentation of the motion ; the motion must have been served not less than 20 days prior to that date.

However, in proceedings relating to the obligation of support or the custody of children or in the case of an application for provisional measures, service made 10 days prior to the date of presentation of the motion is sufficient.

“813.10. If the parties so wish, they each may present their evidence by means of a single affidavit, which must be sufficiently detailed to establish all facts in support of their claims. If the respondent proceeds in this manner, the applicant is entitled to serve one additional detailed affidavit on the respondent as a reply. Any further detailed affidavit must be authorized by the court.

“813.11. The applicant must file at the office of the court the original of the motion, of the detailed affidavit, if any, and of the notice of presentation, with proof of their service, not less than 48 hours prior to the date of presentation.

“813.12. On presentation of an application, the court hears the parties if they are ready to proceed and the record is complete, or fixes a date for the hearing and makes all orders necessary to protect the rights of the parties for the time and on the conditions it determines.

“813.13. Failing agreement between the parties as to the conduct of the proceedings, on presentation of the motion, the court, after examining the questions of law and fact at issue, may

(1) rule on means to simplify or accelerate the procedure and shorten the hearing, including the advisability of amending the written proceedings or of admitting any fact or document;

(2) order, if it deems it appropriate, the contestation of the application in writing on the conditions it determines;

(3) fix, where applicable, the procedure and the time limit for communication of the other detailed affidavits and the exhibits the parties intend to file;

(4) make all orders necessary to protect the rights of the parties for the time and on the conditions it determines;

(5) fix the date of the hearing, possibly for the same day, or order that the motion be entered on the special roll for family cases.

“813.14. If the applicant does not communicate the required exhibits within the time fixed by the court, the respondent may, at the expiry of the time fixed, obtain that the application be dismissed or that the allegations involved be struck off.

“813.15. If the respondent does not file a contestation or communicate the required exhibits within the time fixed by the court, the respondent is foreclosed from doing so and the applicant proceeds by default; however, if, in the court’s opinion, the interests of justice so require, the court may relieve the respondent of the default.

“813.16. In addition to the evidence that has been presented by means of detailed affidavits, the parties may present oral evidence at the hearing.

“813.17. In urgent cases, the court may shorten the time periods prescribed in this subsection.”

15. Articles 814.4, 814.6, 814.8, 814.10, 814.14, 815.2.1, 827.3 and 827.4 of the said Code are amended by replacing “Family Mediation Service of the Superior Court” by “Family Mediation Service”.

16. Article 987 of the said Code is amended by replacing the part of the second paragraph which follows the second comma by the following: “and the clerk gives notice to the parties and convenes them for the date fixed so that a new hearing may be held regarding both the motion in revocation and the merits of the dispute, in accordance with the procedure for service of a copy of the motion.”

17. Article 988 of the said Code is repealed.

18. The said Code is amended by adding the following schedule after Schedule 3:

“SCHEDULE 4

“NOTICE TO DEFENDANT CONCERNING SMALL CLAIMS

“(Articles 119, 983 and 984)

“TAKE NOTICE that if you are being sued for an amount of \$3,000 or less and you intend to contest the action or wish to propose terms and conditions of payment, you may request that the case be referred to the Small Claims Division of the Civil Division of the Court of Québec.

To do so, you must notify in writing the clerk of the court where the declaration was filed within 10 days after it is served or, if that time is expired, before the case is inscribed for judgment by the applicant.

Please note that a referral to the Small Claims Division cannot be requested by a legal person having had more than five employees at any time in the last 12 months. A legal person having had five employees or less must file an affidavit to that effect with its request for referral.”

19. Sections 20 and 22 of the Act to institute, under the Code of Civil Procedure, pre-hearing mediation in family law cases and to amend other provisions of the Code (1997, chapter 42) are amended by replacing “Family Mediation Service of the Superior Court” by “Family Mediation Service”.

20. The provisions of this Act come into force on the date or dates to be fixed by the Government.