



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 99

**An Act to amend the Code of Civil
Procedure to prevent abusive use of the
courts and promote freedom of expression
and citizen participation in public debate**

Introduction

**Introduced by
Mr. Jacques P. Dupuis
Minister of Justice**

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EXPLANATORY NOTES

This bill amends the Code of Civil Procedure to promote freedom of expression and prevent abusive use of the courts, in particular the use of court proceedings to thwart the right of citizens to participate in public debate.

For that purpose, the bill allows the courts to promptly dismiss a proceeding that is abusive. It specifies what may constitute an abuse of procedure and authorizes the reversal of the burden of proof if the abuse of procedure is obvious.

The bill also allows the courts to order the payment of a provision for costs, declare that a legal action is abusive, condemn a party to pay the fees and extrajudicial costs of the other party, and order a party to pay punitive damages.

LEGISLATION AMENDED BY THIS BILL:

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

Bill 99

AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE TO PREVENT ABUSIVE USE OF THE COURTS AND PROMOTE FREEDOM OF EXPRESSION AND CITIZEN PARTICIPATION IN PUBLIC DEBATE

AS it is important to promote freedom of expression as affirmed in the Charter of human rights and freedoms;

AS it is important to prevent abusive use of the courts and discourage judicial proceedings designed to thwart the right of citizens to participate in public debate;

AS it is important to promote access to justice for all citizens and to strike a fairer balance between the financial strength of the parties to a legal action;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting the following after article 54 in Chapter III of Title II of Book I concerning the powers of courts and judges:

“SECTION III

“POWER TO IMPOSE SANCTIONS FOR ABUSE OF PROCEDURE IN FIRST INSTANCE

“54.1. A court of first instance may, at any time, on request or even on its own initiative, declare an action or pleading abusive and impose a sanction on the party concerned.

The abuse of procedure may consist in a claim or pleading that is clearly unfounded, frivolous or dilatory or in a conduct that is vexatious or quarrelsome. It may also consist in bad faith, in a use of procedure that is excessive or unreasonable or causes prejudice to another person, or in a perversion of the ends of justice, in particular if it operates to restrict freedom of expression in public debate.

“54.2. If a party establishes that an action or pleading is *prima facie* an abuse of procedure, the onus is on the party who instituted the action or filed the pleading to show that the action or pleading is not an excessive or unreasonable use of procedure and is justified in law.

“54.3. If there is an abuse of procedure, the court may dismiss the action, strike out a submission or require that it be amended, reject a pleading or terminate or refuse to allow an examination.

“54.4. The court may, if it considers it appropriate,

- (1) subject the furtherance of the action or the pleading to certain conditions;
- (2) require undertakings from the party concerned with regard to the orderly conduct of the proceeding;
- (3) suspend the case for the period it determines;
- (4) recommend to the chief judge or chief justice that special case management be ordered; or
- (5) for serious reasons, if justified by the circumstances, and if the court notes that the financial situation of a party would prevent the party from properly arguing the party’s case, order that a provision for costs in a specified amount be paid to that party.

“54.5. In ruling on the abusive character of an action or pleading, the court may order that a provision for costs be reimbursed, condemn a party to pay, in addition to the costs, damages in reparation for the prejudice suffered by another party, including the fees and extrajudicial costs incurred by that party and, if justified by the circumstances, award punitive damages.

If the amount of the damages is not admitted or may not be established easily at the time the action or pleading is declared abusive, the court may summarily rule on the amount, or reserve the right of a party to have the amount determined by the competent court within the time and under the conditions determined by the court.

“54.6. If the abuse of procedure is committed by a legal person or a person who acts as the administrator of the property of another, the directors and officers of the legal person who took part in the decision or the administrator of the property of another may be personally condemned to pay damages.

If the abuse of procedure results from a party’s quarrelsomeness, the court may also prohibit the party from instituting legal proceedings without the authorization of the chief judge or chief justice.”

2. Chapter III.1 of Title III of Book I of the Code, comprising articles 75.1 and 75.2, is repealed.

3. Article 151.11 of the Code is amended by adding “, character” after “by the nature” in the first sentence.

4. Article 165 of the Code is amended

(1) by striking out paragraph 4;

(2) by adding the following paragraph:

“The defendant may also ask for the complete or partial dismissal of all or part of the action if it is abusive or unfounded in law, even if the facts alleged are true.”

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

