



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-THIRD LEGISLATURE

Bill 73

**An Act to counter non-consensual
sharing of intimate images and
to improve protection and support
in civil matters for persons who are
victims of violence**

Introduction

**Introduced by
Mr. Simon Jolin-Barrette
Minister of Justice**

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EXPLANATORY NOTES

This bill enacts the Act to counter non-consensual sharing of intimate images, which creates a new recourse allowing a person to prevent or put a stop to the non-consensual sharing of an intimate image.

The bill provides a fast and simple procedure to prevent or put a stop to the non-consensual sharing of an intimate image as well as the penalties that may be imposed when an order issued to that effect is disobeyed. An application to obtain such an order is presented to a judge of the Court of Québec or to a presiding justice of the peace.

The Code of Civil Procedure is amended to broaden the scope of a protection order so that it may be used to protect a person who fears that their life, health or safety is threatened, in particular due to a context of violence. It also simplifies the procedure applicable to an application for a protection order and makes the provisions concerning contempt of court inapplicable to the protection order so that Criminal Code sanctions apply to any violation of the order.

The bill provides for testimonial aids for persons who are victims of family, spousal or sexual violence, in particular the possibility of testifying at a distance and of being accompanied by a support dog or a person of trust.

The bill amends the Civil Code, the Labour Code, the Public Service Act, the Act respecting administrative justice and the Act to establish the Administrative Labour Tribunal in order to provide for a presumption of irrelevance of proof based on myths and stereotypes recognized in criminal law when a civil or administrative matter contains allegations of sexual violence or spousal violence.

The bill provides that the Minister of Justice must make sure that government departments and bodies offer training on the realities relating to spousal violence and sexual violence to the persons who are likely to intervene in such contexts.

The proof required of a person who is a victim is facilitated, in the course of an action for damages for injury resulting from an act that constitutes a criminal offence, by allowing the filing of a copy of the judgment of guilty rendered against the perpetrator of the offence, which has become final, to be sufficient as proof of the fault.

The bill provides that the right resulting from a judgment obtained against the person who is liable for injury resulting from a criminal offence as defined in the Act to assist persons who are victims of criminal offences and to facilitate their recovery is not subject to prescription. That right is nevertheless prescribed by three years in the case of the death of the person liable for such an injury.

Lastly, the bill provides that the public servant or public officer designated by the Minister of Justice may, on examining a judgment confirming a situation of violence, issue the certificate that must accompany the notice of resiliation of a lease on grounds of sexual violence, spousal violence or violence towards a child.

LEGISLATION ENACTED BY THIS BILL:

– Act to counter non-consensual sharing of intimate images (*insert the year and chapter number of this Act and the number of the section of that Act that enacts the Act to counter non-consensual sharing of intimate images*).

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec;
- Code of Civil Procedure (chapter C-25.01);
- Labour Code (chapter C-27);
- Public Service Act (chapter F-3.1.1);
- Act respecting administrative justice (chapter J-3);
- Act respecting the Ministère de la Justice (chapter M-19);
- Act to establish the Administrative Labour Tribunal (chapter T-15.1);
- Courts of Justice Act (chapter T-16).

Bill 73

AN ACT TO COUNTER NON-CONSENSUAL SHARING OF INTIMATE IMAGES AND TO IMPROVE PROTECTION AND SUPPORT IN CIVIL MATTERS FOR PERSONS WHO ARE VICTIMS OF VIOLENCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TITLE I

NON-CONSENSUAL SHARING OF INTIMATE IMAGES

CHAPTER I

ENACTMENT OF THE ACT TO COUNTER NON-CONSENSUAL SHARING OF INTIMATE IMAGES

1. The Act to counter non-consensual sharing of intimate images, the text of which appears in this chapter, is enacted.

“ACT TO COUNTER NON-CONSENSUAL SHARING OF INTIMATE IMAGES

“CHAPTER I

“GENERAL PROVISIONS

“1. The purpose of this Act is to allow a person to, in an urgent, simple manner, prevent or put a stop to an infringement on their fundamental rights, in particular the right to the safeguard of their dignity, honour and reputation and the right to respect of their privacy, protected by the Charter of human rights and freedoms (chapter C-12) and by the Civil Code, resulting from the non-consensual sharing of an intimate image, considering that such sharing could cause the person irreparable injury, in particular by reason of the risk of the image being spread by technological means.

“2. An intimate image is any image, altered or not, that represents or appears to represent a person either nude or partially nude, exposing their breasts, genital organs, anal region or buttocks, or engaging in an explicit sexual activity, where the person had a reasonable expectation that their privacy would be protected, whether in the circumstances in which the image was created, taken or recorded or, where applicable, in which the image was shared.

Any visual or sound recording or live broadcast is considered an image for the purposes of this Act.

“3. The sharing of an intimate image includes publishing, broadcasting, distributing, transmitting, selling, communicating, making available or advertising such an image.

“4. Consent to the creation, taking, recording or sharing of an intimate image does not constitute a renunciation of the fundamental rights that the person who gave consent is entitled to expect in other circumstances.

“5. A person may revoke their consent to the sharing of an intimate image.

Any person to whom the revocation is communicated must abstain from sharing the intimate image and make every reasonable effort to make the image inaccessible. Failing that, the person is responsible for any injury resulting from the image being made accessible or being shared.

However, revocation is not possible where the consent was given under a contract entered into for commercial or artistic purposes, unless the possibility of revoking consent was provided for therein.

“CHAPTER II

“URGENT ORDER TO CEASE OR PREVENT THE SHARING OF AN INTIMATE IMAGE

“6. A judge of the Court of Québec or a presiding justice of the peace may, where an intimate image is shared without consent or there is a threat of such sharing, order any person who possesses or has control of an intimate image to, upon notification of the order,

- (1) abstain from sharing the image;
- (2) cease any sharing of the image; and
- (3) destroy the image.

Likewise, the judge or presiding justice of the peace may order any person to de-index any hyperlink allowing access to the image.

In addition, the judge or presiding justice of the peace may order any person to provide them with any information necessary or useful for putting a stop to the sharing of such an image or for preventing it, in particular any information that may be used to identify a person who has shared such an image or who is threatening to do so, and may issue any other incidental order that is appropriate in the circumstances.

“7. An application for such an order may be made by the person represented in the image or, where the latter consents to it or the court so authorizes, by another person or by a body.

In the event that the person represented in the image is deceased, the application for an order may also be made by the person’s spouse, a close relative or a person connected by marriage or a civil union.

“8. A minor 14 years of age or over may file the application for the order alone or give their consent alone for another person or a body to file the application on their behalf.

“9. The person applying for such an order must, in order to obtain it, declare

(1) that they are the person represented in the intimate image within the meaning of this Act or that they are authorized to present the application, in particular because they have the consent of that person;

(2) that the intimate image is being shared, or that a person is threatening to share it, without the consent of the person represented in the image; and

(3) that they are applying for the order provided for by this Act.

The statement is deemed to be made under oath.

The person applying for the order also provides any information, of which they have knowledge, that could help prevent or put a stop to the sharing of the intimate image.

“10. The application for an order may be made by means of an outline that briefly presents the alleged facts or by using the form established by the Minister of Justice.

Supporting documents, if any, are to be produced with the court office in a manner that ensures their confidentiality.

“11. The application for an order need not be notified to the defendant, unless the court orders otherwise.

“12. The application for an order is heard and decided on an urgent basis.

The application may be heard outside the presence of the parties.

“13. The order may be issued with respect to any person, even if the person’s identity is unknown to the court.

“14. The order is notified without delay by the court clerk to the defendant and to any other person the order concerns and whose identity or other information allowing notification is known at the time the order is issued.

Notification may be made by any appropriate method that provides proof that the order was delivered, including by court bailiff, by registered mail, by having the order delivered personally by a courier, or by a technological means.

Whatever the method of notification used, a person who acknowledges receipt of the document or admits having received it is deemed to have been validly notified.

“15. Within 30 days after notification of the order, the defendant or any other person the order concerns may request that the order be annulled on the grounds that the allegations in the statement made by the person who requested the order are insufficient or false, in particular for one of the following reasons:

(1) the person represented in the image did not have a reasonable expectation of privacy in the circumstances where the image was created, taken, recorded or shared, in particular because the defendant, or other person the order concerns, had the person’s free and enlightened consent in those circumstances; or

(2) the image was shared for legitimate public information purposes without exceeding what is reasonable.

The application must be presented, in writing, in the district of the court that issued the order, as if it were an application in the course of a proceeding. It is to be heard and decided without delay.

The decision for annulment of the order may only be appealed by leave of a judge of the Court of Appeal.

“16. The order remains in force despite an application for annulment or an appeal, unless the court orders otherwise.

“17. Despite section 23 of the Charter of human rights and freedoms (chapter C-12), the hearing is held in camera and access to the court record is restricted.

However, if all parties are of full age, the court may, in the interests of justice, order that the hearing be public and that certain persons with a legitimate interest may have access to the record.

No person who has had access to the record may disclose or disseminate any information that would allow a party in a proceeding to be identified, unless authorized by the court.

“18. In addition to the sanction for contempt of court, anyone who neglects or refuses to comply with an order issued under this Act is liable to a fine of \$500 to \$5,000 per day in the case of a natural person or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and to a fine of \$5,000 to \$50,000 per day in any other case.

For a subsequent offence, the amounts are doubled.

There may be no accumulation of proceedings for contempt of court and of proceedings seeking a penal sanction for the violation of an order issued under this Act that occurred on the same day and is based on the same facts.

“19. If a legal person disobeys an order issued under this Act, the officer, director or representative of the legal person who ordered or authorized the commission of the act or the omission constituting the offence or who consented to it is a party to the offence and is liable to the same penalty as that legal person.

“20. All sums collected as fines under this Act are credited to the fund dedicated to assistance for persons who are victims of criminal offences established under the Act to assist persons who are victims of criminal offences and to facilitate their recovery (chapter P-9.2.1).

“CHAPTER III

“CIVIL LIABILITY

“21. A person who shared an intimate image without consent or who threatened to do so is bound to make reparation for the injury caused, unless they prove that they have not committed any fault.

“22. Despite section 23 of the Charter of human rights and freedoms (chapter C-12), the hearing is held in camera and access to the court record is restricted.

However, if all parties are of full age, the court may, in the interests of justice, order that the hearing be public and that certain persons with a legitimate interest may have access to the record.

No person who has had access to the record may disclose or disseminate any information that would allow a party in a proceeding to be identified, unless authorized by the court.

“CHAPTER IV

“FINAL PROVISION

“23. The Minister of Justice is responsible for the administration of this Act.”

CHAPTER II

AMENDING PROVISION

COURTS OF JUSTICE ACT

2. Schedule V to the Courts of Justice Act (chapter T-16) is amended by adding the following at the end of paragraph 1:

“—issuing orders under the Act to counter non-consensual sharing of intimate images (*insert the year and chapter number of this Act and the number of the section of that Act that enacts the Act to counter non-consensual sharing of intimate images*).”

TITLE II

OTHER PROTECTION MEASURES

CHAPTER I

CIVIL PROTECTION ORDER

CODE OF CIVIL PROCEDURE

3. Article 58 of the Code of Civil Procedure (chapter C-25.01) is amended by striking out both occurrences of “or protection order” in the second paragraph.

4. Article 69 of the Code is amended by inserting “protection orders,” after “temporary injunctions,” in the second paragraph.

5. Article 509 of the Code is amended by striking out the second and third paragraphs.

6. The Code is amended by inserting the following chapter after article 515:

“CHAPTER I.1

“PROTECTION ORDER

“515.1. A protection order is an order directing a natural person to refrain from or cease doing something or to perform a specified act in order to protect another natural person who fears that their life, health or safety is threatened, in particular due to a context of violence based on a concept of honour, of family, spousal or sexual violence, of intimidation or of harassment.

An application for a protection order may be made by means of an outline that briefly presents the alleged facts or by using the form established by the Minister of Justice.

An application for a protection order may also be made, where the person fearing the threat consents to it or where the court so authorizes, by another person or by a body.

The application for a protection order is deemed to be made under oath.

“515.2. An application for a protection order is notified to other parties with a notice of its presentation.

However, the court may issue a protection order for a maximum period of 10 days without the application having been notified to the other party.

Once the application has been notified, the order may, prior to the trial on the merits, be extended or issued for a period of more than 10 days.

“515.3. An application for a protection order is tried and decided on an urgent basis.

The protection order is issued for a maximum period of three years and on the conditions determined by the court. It may be renewed, extended or issued anew.

“515.4. A judgment granting a protection order is notified without delay by the court clerk to the parties, to any other person identified in it, and to the police force of the plaintiff’s place of domicile. Despite the second paragraph of article 133, notification may be made by a technological means.

The provisions relating to contempt of court do not apply to a person who disobeys a protection order.

The protection order is enforceable despite a contestation or an appeal, unless the court orders otherwise.”

CHAPTER II

TESTIMONIAL AIDS FOR PERSONS WHO ARE VICTIMS

CODE OF CIVIL PROCEDURE

7. Article 95 of the Code of Civil Procedure (chapter C-25.01) is amended by adding the following paragraph at the end:

“A party may elect domicile at the firm of the lawyer that is representing the party or, failing that, at the court office, if the party has filed with the court office a certificate confirming that the party has gone to an assistance organization for persons who are victims that is recognized by the Minister of Justice for help as a victim of family, spousal or sexual violence on the part of another party or a witness in the proceeding. The party’s domiciliary address and certificate are confidential; the domiciliary address may be communicated

only with the authorization of the court and only if warranted on serious grounds. However, the party's domiciliary address accompanies the judgment where the law provides that the judgment is to be notified by the court clerk to a public officer, a government department or a public body or appears on the statements required under article 444."

8. Article 110 of the Code is amended by adding the following sentence at the end of the first paragraph: "However, notification to a party that has filed with the court office the certificate referred to in article 95 is made by a technological means."

9. Article 279 of the Code is amended

(1) by inserting the following paragraph after the third paragraph:

"A witness, with the authorization of the court, or a party that has filed with the court office a certificate confirming that it has gone to an assistance organization for persons who are victims that is recognized by the Minister of Justice for help as a victim of family, spousal or sexual violence on the part of a party or of another witness in the proceeding, may testify at a distance and be accompanied by someone they consider capable of providing assistance or reassurance. The witness or party may also be accompanied by a dog specifically trained for assistance in court and by the dog's handler, if applicable.";

(2) by adding the following sentence at the end of the fourth paragraph: "The court may also order the witness to testify in person if it considers that testimony at a distance does not allow the court to assess the witness's credibility."

10. Article 444 of the Code is amended by adding the following paragraph at the end:

"The information contained in the statements is confidential. It is collected only for the application of the Act to facilitate the payment of support (chapter P-2.2) by the Agence du revenu du Québec."

11. Article 445 of the Code is amended by inserting ", except the statements required under article 444" after "prescribed documents".

CHAPTER III

RESILIATION OF A LEASE OF A DWELLING

CIVIL CODE OF QUÉBEC

12. Article 1974.1 of the Civil Code of Québec is amended by inserting "a judgment confirming a situation of violence or" after "who, on examining" in the third paragraph.

CHAPTER IV

MEANS OF PROOF AND EXEMPTIONS FROM PRESCRIPTION

DIVISION I

MEANS OF PROOF

CIVIL CODE OF QUÉBEC

13. The Civil Code of Québec is amended by inserting the following article after article 2858:

“**2858.1.** Where a matter contains allegations of sexual violence or spousal violence, the following facts are presumed to be irrelevant:

(1) any fact relating to the reputation of the person who is the alleged victim of the violence;

(2) any fact related to the sexual behaviour of that person, other than a fact pertaining to the proceeding, and that is invoked to attack the person’s credibility;

(3) the fact that the person did not ask that the behaviour cease;

(4) the fact that the person did not file a complaint or exercise a recourse regarding the violence;

(5) any fact in connection with the delay in reporting the alleged violence; and

(6) the fact that the person maintained relations with the alleged perpetrator of the violence.

Any debate relating to the admissibility in evidence of any such fact is an issue of law and is to be held in camera, despite section 23 of the Charter of human rights and freedoms (chapter C-12).”

14. The Code is amended by inserting the following chapter after article 2874:

“CHAPTER IV

“PROOF OF CERTAIN FACTS

“**2874.1.** In the course of an action for damages for injury resulting from an act that constitutes a criminal offence, the filing of a copy of the judgment of guilty rendered against the perpetrator of the offence, having become final, is sufficient as proof of the fault.”

LABOUR CODE

15. The Labour Code (chapter C-27) is amended by inserting the following section after section 100.9:

“100.9.1. Despite any rule of evidence, where a matter contains allegations of sexual violence or spousal violence, the following facts are presumed to be irrelevant:

(1) any fact relating to the reputation of the person who is the alleged victim of the violence;

(2) any fact related to the sexual behaviour of that person, other than a fact pertaining to the proceeding, and that is invoked to attack the person’s credibility;

(3) any fact in connection with the absence of a request to have the alleged sexually connotative gestures, practices, language, behaviour or attitudes cease;

(4) any fact in connection with whether a complaint under the Criminal Code (R.S.C. 1985, c. C-46) was filed or not in respect of the alleged violence;

(5) any fact in connection with the delay in reporting the alleged violence, except to demonstrate the existence or absence of reasonable grounds for extending a time limit or for relieving a person or not from the consequences of failing to act within a time limit; and

(6) the fact that the person maintained relations with the alleged perpetrator of the violence.

Article 209 of the Code of Civil Procedure (chapter C-25.01) applies to any debate relating to the admissibility in evidence of any such fact. Such a debate is to be held in camera, despite section 23 of the Charter of human rights and freedoms (chapter C-12).”

PUBLIC SERVICE ACT

16. The Public Service Act (chapter F-3.1.1) is amended by adding the following section after section 116:

“116.0.1. Despite any rule of evidence, where a matter contains allegations of sexual violence or spousal violence, the following facts are presumed to be irrelevant:

(1) any fact relating to the reputation of the person who is the alleged victim of the violence;

(2) any fact related to the sexual behaviour of that person, other than a fact pertaining to the proceeding, and that is invoked to attack the person's credibility;

(3) any fact in connection with the absence of a request to have the alleged sexually connotative gestures, practices, language, behaviour or attitudes cease;

(4) any fact in connection with whether a complaint under the Criminal Code (R.S.C. 1985, c. C-46) was filed or not in respect of the alleged violence;

(5) any fact in connection with the delay in reporting the alleged violence, except to demonstrate the existence or absence of reasonable grounds for extending a time limit or for relieving a person or not from the consequences of failing to act within a time limit; and

(6) the fact that the person maintained relations with the alleged perpetrator of the violence.

Article 209 of the Code of Civil Procedure (chapter C-25.01) applies to any debate relating to the admissibility in evidence of any such facts. Such a debate is to be held in camera, despite section 23 of the Charter of human rights and freedoms (chapter C-12).”

ACT RESPECTING ADMINISTRATIVE JUSTICE

17. Section 137 of the Act respecting administrative justice (chapter J-3) is amended by adding the following paragraphs at the end:

“Where a matter contains allegations of sexual violence or spousal violence, the following facts are presumed to be irrelevant:

(1) any fact relating to the reputation of the person who is the alleged victim of the violence;

(2) any fact related to the sexual behaviour of that person, other than a fact pertaining to the proceeding, and that is invoked to attack the person's credibility;

(3) the fact that the person did not ask that the behaviour cease;

(4) the fact that the person did not file a complaint or exercise a recourse regarding the violence;

(5) any fact in connection with the delay in reporting the alleged violence; and

(6) the fact that the party maintained relations with the alleged perpetrator of the violence.

Article 209 of the Code of Civil Procedure (chapter C-25.01) applies to any debate relating to the admissibility in evidence of any such facts. Such a debate is to be held in camera, despite section 23 of the Charter of human rights and freedoms (chapter C-12).”

ACT TO ESTABLISH THE ADMINISTRATIVE LABOUR TRIBUNAL

18. The Act to establish the Administrative Labour Tribunal (chapter T-15.1) is amended by inserting the following section after section 35:

“35.1. Despite any rule of evidence, where a matter contains allegations of sexual violence or spousal violence, the following facts are presumed to be irrelevant:

(1) any fact relating to the reputation of the person who is the alleged victim of the violence;

(2) any fact related to the sexual behaviour of that person, other than a fact pertaining to the proceeding, and that is invoked to attack the person’s credibility;

(3) any fact in connection with the absence of a request to have the alleged sexually connotative gestures, practices, language, behaviour or attitudes cease;

(4) any fact in connection with whether a complaint under the Criminal Code (R.S.C. 1985, c. C-46) was filed or not in respect of the alleged violence;

(5) any fact in connection with the delay in reporting the alleged violence, except to demonstrate the existence or absence of reasonable grounds for extending a time limit or for relieving a person or not from the consequences of failing to act within a time limit; and

(6) the fact that the person maintained relations with the alleged perpetrator of the violence.

Article 209 of the Code of Civil Procedure (chapter C-25.01) applies to any debate relating to the admissibility in evidence of any such facts. Such a debate is to be held in camera, despite section 23 of the Charter of human rights and freedoms (chapter C-12).”

DIVISION II

EXEMPTION FROM PRESCRIPTION

CIVIL CODE OF QUÉBEC

19. Article 2924 of the Civil Code of Québec is amended by adding the following paragraph at the end:

“However, such a right is not subject to prescription if it results from a judgment obtained against the person who is liable for injury resulting from a criminal offence as defined in the Act to assist persons who are victims of criminal offences and to facilitate their recovery (chapter P-9.2.1). Execution of such a judgment is nevertheless prescribed by three years from the death of the person liable for the injury.”

CHAPTER V

TRAINING FOR PERSONS INTERVENING IN SEXUAL AND SPOUSAL VIOLENCE MATTERS

ACT RESPECTING THE MINISTÈRE DE LA JUSTICE

20. Section 3 of the Act respecting the Ministère de la Justice (chapter M-19) is amended by replacing subparagraph *f.1* of the second paragraph by the following subparagraph:

“(f.1) makes sure that the government departments and bodies concerned offer basic and specialized training on the realities relating to spousal violence and sexual violence to the persons who are likely to intervene in such contexts;”.

TITLE III

FINAL PROVISION

21. The provisions of this Act come into force on (*insert the date of assent to this Act*), except those of sections 1 to 9, which come into force on (*insert the date that is six months after the date of assent to this Act*) or any earlier date set by the Government.

