



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 9

(2009, chapter 12)

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

Introduced 7 April 2009

Passed in principle 12 May 2009

Passed 3 June 2009

Assented to 4 June 2009

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EXPLANATORY NOTES

This Act amends the Code of Civil Procedure to promote freedom of expression and prevent improper use of the courts and the abuse of procedure, in particular if it thwarts the right of citizens to participate in public debate.

For that purpose, the Act allows the courts to promptly dismiss a proceeding that is improper. It specifies what may constitute an improper use of procedure and authorizes the reversal of the burden of proof if the improper use of procedure is summarily established.

The Act also allows the courts to order the payment of a provision for costs, declare that a legal action is improper, 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 ACT:

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

Bill 9

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

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

AS it is important to prevent improper 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. Article 26 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting the following subparagraph after subparagraph 4 of the second paragraph:

“(4.1) from any judgment that dismisses an action because of its improper nature;”.

2. The Code 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 IMPROPER USE OF PROCEDURE

“54.1. A court may, at any time, on request or even on its own initiative after having heard the parties on the point, declare an action or other pleading improper and impose a sanction on the party concerned.

The procedural impropriety may consist in a claim or pleading that is clearly unfounded, frivolous or dilatory or in 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 an attempt to defeat the ends of justice, in particular if it restricts freedom of expression in public debate.

“54.2. If a party summarily establishes that an action or pleading may be an improper use of procedure, the onus is on the initiator of the action or pleading to show that it is not excessive or unreasonable and is justified in law.

A motion to have an action in the first instance dismissed on the grounds of its improper nature is presented as a preliminary exception.

“54.3. If the court notes an improper use of procedure, it may dismiss the action or other pleading, strike out a submission or require that it be amended, terminate or refuse to allow an examination, or annul a writ of summons served on a witness.

In such a case or where there appears to have been an improper use of procedure, 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 proceeding for the period it determines;
- (4) recommend to the chief judge or chief justice that special case management be ordered; or
- (5) order the initiator of the action or pleading to pay to the other party, under pain of dismissal of the action or pleading, a provision for the costs of the proceeding, if justified by the circumstances and if the court notes that without such assistance the party’s financial situation would prevent it from effectively arguing its case.

“54.4. On ruling on whether an action or pleading is improper, the court may order a provision for costs to be reimbursed, condemn a party to pay, in addition to 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 improper, the court may summarily rule on the amount within the time and under the conditions determined by the court.

“54.5. If the improper use of procedure results from a party’s quarrelsomeness, the court may, in addition, prohibit the party from instituting legal proceedings except with the authorization of and subject to the conditions determined by the chief judge or chief justice.

“54.6. If a legal person or an administrator of the property of another resorts to an improper use of procedure, the directors and officers of the legal person who took part in the decision or the administrator may be ordered personally to pay damages.”

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

4. Article 151.11 of the Code is amended by inserting “, de son caractère” after “en raison de sa nature” in the first sentence in the French text.

5. Article 547 of the Code is amended by replacing subparagraph *j* of the first paragraph by the following subparagraph:

“(j) judgments with regard to an improper use of procedure.”

6. The improper nature of an action or pleading instituted or filed before the coming into force of this Act must be determined in accordance with the new rules. However, the second paragraph of article 54.2 and article 54.6 of the Code of Civil Procedure (R.S.Q., chapter C-25), enacted by section 2, apply only to actions instituted or pleadings filed after 4 July 2009.

7. Not later than 1 October 2012, the Minister of Justice must report to the Government on the carrying out of this Act, in particular with respect to the use made by the courts of the measures provided for in articles 54.3 and 54.4 of the Code of Civil Procedure.

The report is tabled in the National Assembly within the next 30 days or, if the Assembly is not sitting, within 30 days of resumption. The report is examined by the competent committee of the National Assembly.

8. This Act comes into force on 4 June 2009.

