

CIVIL AND COMMERCIAL LITIGATION



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Facilitating the Enforcement of Judgments: A Closer Look at article 657 of the *Code of Civil Procedure*.

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The authority of precedent or *res judicata*, codified in article 2848 of the *Civil Code of Québec*, is a fundamental principle of law, aimed primarily at ensuring the security and stability of social and legal relationships. This principle is also tied to the doctrine of divestiture ("*functus officio*"). According to this doctrine, the court that has decided a question has discharged its duties and can no longer reconsider its decision. Parties who disagree in fact or in law with the rendered judgment may seek its revision, revocation, or appeal.

There are exceptions to the *functus officio* rule established in paragraph 2 of article 321 of the *Code of Civil Procedure* ("**C.C.P.**").

The first, with which most legal practitioners are familiar with, is rectification of judgment, under article 338 (1) C.C.P. This states that a judgment "containing an error in writing or calculation, or any other clerical error, including an error in the description of property, may be corrected by the person who rendered it. The same applies to a judgment which, by obvious inadvertence, grants more than was sought or does not rule on part of the application."

Rectification of judgment is a procedural measure. Its application is limited to very specific cases. These are generally minor typographical, numerical or wording errors that do not affect the merits of the case and do not modify the decision rendered or the conclusions reached.

Many practitioners may be less familiar with the power granted to the court by article 657 C.C.P., which reads as follows:

657. After the judgment, the court may issue any order to facilitate execution, whether forced or voluntary, in the manner that is most advantageous for the parties and most consistent with their interests.

This article allows the parties to request clarification from the court in the event of difficulties in enforcing or interpreting the judgment.¹ Requests based on article 657 C.C.P. constitute an important exception to the *functus officio* principle².

¹ *Droit de la famille* — 18975, 2018 QCCS 1905, par. 11.

² *SNC-Lavalin inc. (Terratech inc. et SNC-Lavalin Environnement inc.) v. Souscripteurs du Lloyd's*, 2020 QCCS 2058, par. 31-32.

In fact, under this article, the court has the power to issue, after judgment, additional orders to facilitate the execution of the judgment. This is an invaluable tool, particularly when circumstances change over time, making it difficult, if not impossible, to strictly apply initial terms of enforcement.

The relatively new article 657 C.C.P. is inspired by articles 579 and 817.4 of the former *Code of Civil Procedure* (1965), allowing the judge to issue certain orders in cases of seizure of movable property and in family matters, at the joint request of the parties.³

With the coming into force of article 657 C.C.P. in 2014, the legislator intended to simplify the enforcement of judgments. This article offers the parties a mechanism allowing them to ask the court to clarify a judgment regarding the rights and obligations arising therefrom.⁴

Article 659 C.C.P. specifies that such a request must be made before the court that rendered the judgment. This was reiterated by the Court of Quebec in *Lafrenière v. Loïselle*, 2020 QCCQ 5587, when the Court was seized of an application under article 657 C.C.P. to interpret the conclusions of a Superior Court judgment. Despite the monetary value that would have given the Court of Quebec jurisdiction, the court declined to hear the application, sending the parties back to the Superior Court.

When a party makes a request based on article 657 C.C.P., the court has the authority to examine the request and provide the appropriate clarifications, if necessary. Orders issued must be (a) suitable to facilitate the execution of the judgment, (b) in the manner most consistent with the interests of the parties, and (c) in the manner most advantageous to them.⁵

The Quebec Justice Minister, in her commentaries, indicates that article 657 C.C.P. must receive a large and liberal interpretation. The Minister specifies that various measures can be contemplated, based on those set out in paragraphs 7 (2) a) and b) of the Uniform Civil Enforcement of Money Judgments Act (2004).⁶

In *Droit de la famille* - 192442, the Court of Appeal concluded that article 657 C.C.P. allows the court to:

(a) issue a declaratory judgment or an injunctive relief order to protect the interests of a person arising from the execution of a judgment; and

(b) give directions to any person as to the exercise of his rights or the performance of his duties or obligations arising out of such execution.⁷

(Translated)

It should be noted, however, that article 657 C.C.P. does not allow the judge to alter the substance or essence of the judgment rendered,⁸ which would derogate from the principle of *res judicata*. Measures must be limited to facilitating the execution of the judgment.

In *Studio de Danse Danielle v. Joanisse*, the Defendant refused to disclose her date of birth and social insurance number to her employer. This refusal prevented the Plaintiff from enforcing the judgment

³ *Commentaries of the Justice Minister*, (2015) article 657 C.p.c.

⁴ *Code of Civil Procedure*, c. C-25.01, art. 659; *Droit de la famille* — 18975, op cit., par. 9 to 14.

⁵ *Droit de la famille* — 18975, op cit., par. 12.

⁶ *Commentaries of the Justice Minister*, op cit.

⁷ *Droit de la famille* — 192442, 2019 QCCA 2096, par. 9.

⁸ *Dubeau v. Croteau*, 2016 QCCS 5125, par. 6 et 27 to 29.

ordering the seizure of the Defendant's wages.⁹ Relying on the powers conferred under article 657 C.C.P., the Court of Quebec issued an order compelling Defendant to disclose her personal information, so that the judgment in favor of Plaintiff could be enforced.

Article 657 C.C.P. is applicable in a wide variety of legal contexts, including commercial disputes, property rights litigation, and all other circumstances requiring a precise interpretation of judgments to ensure their equitable enforcement.

In contractual matters, parties may ask the court to clarify payment terms, deadlines or specific obligations arising from a judgment. In family matters, the court may also, after having rendered a judgment, clarify the terms of custody, alimony, or division of property.

Article 657 C.C.P. can be particularly useful and effective in cases where the parties' good faith is essential to enforce the judgment. As the Court of Appeal points out, this provision "makes it possible to remedy such situations quickly and with little expense, by allowing the court to intervene and make orders to ensure the enforcement of judgments".¹⁰ (Translated)

In conclusion, article 657 C.C.P. offers an exception to the principle of *functus officio*, allowing parties to request post-judgment measures from the court to facilitate enforcement. Whereas an appeal can modify the content of the judgment and its conclusions, and rectification focuses on correcting material errors, the powers provided for in article 657 C.C.P. favor execution of judgments by a means that is "simple, flexible, expeditious and inexpensive".¹¹ This provision, while practical, must not be used in such a way as to threaten the stability of judgments, a cornerstone of our rule of law.

For more information, contact one of our [Civil and Commercial Litigation Group members](#).

* *The contents of this document provide only an overview of the subject matter and should not be construed as legal advice.*

* *The reader should not rely solely on this document to make a decision, but should consult his own legal advisors.*

⁹ *Studio de Danse Danielle v. Joanisse*, 2022 QCCQ 8840.

¹⁰ *Droit de la famille* — 192442, op. cit., par. 9.

¹¹ *Droit de la famille* — 22708, 2022 QCCS 1588, par. 13.