



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 10

(1996, chapter 15)

An Act to amend the Act respecting the Québec Pension Plan

Introduced 30 April 1996
Passage in principle 7 May 1996
Passage 13 June 1996
Assented to 20 June 1996

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EXPLANATORY NOTES

This bill amends the Act respecting the Québec Pension Plan to formalize the renunciation of partition of earnings registered under the Act. To that end, there will be a requirement that the intention of setting aside partition be clearly expressed by using, for instance, the terms that are proposed in the bill. In addition, the court, as well as the notary, will be responsible for ascertaining that the consent to renunciation is given in a free and enlightened manner.

Under the new provisions, the court may decide that the end of the partition period will be determined in relation to the date on which the spouses ceased to live together. Moreover, the Régie will be allowed in certain situations not to effect a partition of earnings or to annul such a partition.

Finally, it is declared in the bill that partition of earnings can be effected even if the spouses are not subject to the provisions of the Civil Code of Québec which pertain to family patrimony or if such provisions are not applicable to them.

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 102.1 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended

(1) by replacing the words “may be partitioned between them” in the second and third lines of the first paragraph by the words “shall be partitioned between them, in case of separation from bed and board, divorce or nullity of marriage,”;

(2) by replacing the figure “102.10.1” in the fourth line of the first paragraph by the figure “102.10.2”;

(3) by replacing the words “tribunal mentions, in the judgment of separation from bed and board, divorce or annulment of marriage,” in the first and second lines of the second paragraph by the words “court indicates, in the judgment giving rise to partition”;

(4) by adding, after the second paragraph, the following paragraphs:

“The indication of the court and the renunciation referred to in the second paragraph shall have effect only if they clearly express the intention that there be no partition of earnings registered pursuant to this Act, by the use of the following or equivalent terms: “There shall be no partition of earnings registered pursuant to the Act respecting the Québec Pension Plan.”

Where partition of earnings is renounced, the court or, if renunciation is effected by notarial act, the notary shall ascertain that the consent of the renouncing spouses is given in a free and enlightened manner.”

2. Section 102.3 of the said Act is amended

(1) by striking out the words “or, where the tribunal mentions in the judgment of divorce, annulment or separation, or in a subsequent judgment, that the value of the family patrimony must be established as on the date on which the spouses ceased to live together, to the end of the year preceding the latter date” in the sixth, seventh, eighth and ninth lines;

(2) by adding, at the end, the following paragraph:

“However, the period of partition may terminate at the end of the year preceding the year which includes the date on which the spouses ceased to live together if the court indicates, in the judgment giving rise to partition or in a subsequent judgment, either that the value of the family patrimony must be established as it stood on the date on which the spouses ceased to live together or that the end of the period of partition of earnings must be established in relation to that date.”

3. The said Act is amended by inserting, after section 102.4, the following section:

“102.4.1 Notwithstanding the first paragraph of section 102.1, the Régie may, in the following situations, not effect the partition of earnings or, if a former spouse who is a beneficiary of benefits applies therefor within the time fixed by regulation, annul a partition

(a) where benefits are payable to or in respect of both former spouses and the Régie establishes that partition reduces the benefits;
or

(b) provided the Régie obtains the consent of the former spouses, where benefits are payable to or in respect of only one former spouse and the Régie establishes that partition would cause a reduction of such benefits without causing the other former spouse to qualify for any of the benefits listed in section 105 or increasing the benefits that may become payable to the other former spouse.

The Régie shall inform the former spouses where it does not effect partition or annuls a partition.”

4. The said Act is amended by adding, after section 102.10.1, the following section:

“102.10.2 Spouses in respect of whom the provisions of the Civil Code of Québec pertaining to family patrimony do not apply owing to the fact that

(1) before 1 January 1991, they expressed their wish to not be subject thereto in whole or in part,

(2) before 15 May 1989, they had ceased to live together and had settled the consequences of their separation by means of a written agreement or otherwise, or

(3) their application for separation from bed and board, divorce or annulment of marriage had been introduced before 15 May 1989

are not deprived of the right to a partition of earnings under this Act.”

5. Section 219 of the said Act is amended by inserting, after paragraph *c*, the following paragraph:

“(c.1) fixing, for the purposes of section 102.4.1, the time within which an application for the annulment of partition may be presented;”.

6. The provisions of paragraph 4 of section 1 do not apply to judgments pronounced before 1 January 1997 or to notarial acts made before that date.

7. Section 102.10.2 of the Act respecting the Québec Pension Plan, enacted by section 4, is declaratory.

8. This Act comes into force on 20 June 1996.