



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 443

(1998, chapter 51)

**An Act to amend the Code of Civil
Procedure and other legislative
provisions in relation to notarial matters**

**Introduced 27 May 1998
Passage in principle 5 June 1998
Passage 20 October 1998
Assented to 21 October 1998**

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EXPLANATORY NOTES

This bill amends the Code of Civil Procedure to allow certain applications relating to tutorship to a minor, protective supervision of a person of full age, mandates in anticipation of incapacity or the probate of wills to be presented to a notary. The process proposed by the bill will maintain all requirements as to evidence presently imposed by law, in particular as regards service on or notification to interested persons of the application and notices, the examinations to be conducted and the medical and psychosocial assessments to be obtained.

In addition, the bill requires a notary to whom an application is presented to deposit without delay at the office of the court of the domicile or residence of the minor or the person of full age who is incapable of consent an authentic copy of the minutes of the notarial operations together with all supporting documents. The court is seized of the matter upon the deposit of the notary's minutes. However, the deposit of the minutes of the probate of a will is solely for publication purposes.

In the absence of opposition within 10 days of the deposit of the notary's minutes, the judge or the clerk may accept or reject the conclusions of the minutes and make all orders necessary to protect the rights of the parties for the period and on the conditions determined by the judge or the clerk.

Moreover, the Civil Code is amended to allow a father or a mother to appoint a tutor for his or her child by way of a mandate in anticipation of incapacity. The bill also provides that the designation or replacement of the liquidator of a succession must be published in the register of personal and movable real rights and, where applicable, in the land register.

Finally, the Bureau of the Chambre des notaires du Québec will be required to make, and obtain government approval for, regulations determining the conditions to be met by a notary to be certified in respect of the institution or review of protective supervision and mandates in anticipation of incapacity. The Government is given the power to establish, by regulation, a tariff of fees for professional services in connection with such matters.

LEGISLATION AMENDED BY THIS BILL :

- Civil Code of Québec (1991, chapter 64);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Notarial Act (R.S.Q., chapter N-2).

Bill 443

AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE AND OTHER LEGISLATIVE PROVISIONS IN RELATION TO NOTARIAL MATTERS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Article 135.1 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by adding, at the end, the following :

“Where there is a risk that personal service may worsen the physical or psychological condition of the person concerned by the application, the judge may, on a motion and insofar as the initial application was served personally, authorize that service be effected by means of a sealed envelope, speaking to a reasonable person having custody of the person.”

2. The said Code is amended by replacing the heading of Chapter I of Book VI by the following :

“CHAPTER I

“GENERAL PROVISIONS

“SECTION I

“RULES APPLICABLE BEFORE THE COURT”.

3. The said Code is amended by adding, after article 863.3, the following :

“SECTION II

“RULES APPLICABLE BEFORE THE NOTARY

“863.4. An application relating to a tutorship council, to the appointment or replacement of a tutor to a minor, to the institution or review of protective supervision, to a mandate given in anticipation of the mandator’s incapacity, to the probate of a will or to letters of verification may also be presented to a notary in accordance with the special rules contained in this Book.

“863.5. The notary must notify the application to the interested persons and provide them with all information relevant to the object and causes of the application. However, the application must be served on the person concerned in accordance with article 135.1.

The application must be accompanied with a notice clearly stating the time and place at which the notarial operations are to begin as well as the object of the application and the nature of the rights of the interested persons, including their right to present any observations or make any representations they see fit or to oppose the application.

A copy of the notice is deposited by the notary at the office of the competent court; the deposit is effected free of charge and solely for publication purposes. The clerk must inform the notary without delay of any observation, representation or opposition relating to the notice.

“863.6. In exercising notarial functions under this section, the notary must act in the interest of the person concerned by the application. In the case of protective supervision or a mandate in anticipation of incapacity, the notary must also act in such a manner as to protect the rights and autonomy of the person concerned.

“863.7. Minutes that identify the interested persons, including the person who presented the application, and that set out the facts on which the application is based are drawn up by the notary; the minutes contain a complete and detailed report of the notarial operations and of the notary’s conclusions, in particular concerning the testimony that the notary is required to take and the deliberations of the tutorship council or of the meeting of relatives, persons connected by marriage or friends.

“863.8. Where observations or representations made constitute actual contestation of the merits of the application examined by a notary, the notary must relinquish the matter and inform the interested persons; in such a case, the notary draws up the minutes of the operations that have taken place and transfers the matter to the competent court, which is seized of the matter upon the deposit of the notary’s minutes.

The court may, if it considers it expedient, assign to the notary the mission of taking all evidence necessary for the pursuit of the matter, and fix the time within which the notary must report on the notarial operations to enable the court to make its own assessment of the facts.

“863.9. In matters pertaining to the tutorship to a minor, the protective supervision of a person of full age or a mandate in anticipation of incapacity, the notary must deposit without delay at the office of the court of the domicile or residence of the minor or the incapable person of full age an authentic copy of the minutes, accompanied with all supporting documents.

The notary must notify a copy of the minutes to the interested persons, including, according to the case, the minor if the minor is 14 years of age or over or the person of full age, the tutor or curator, the mandator, the mandatary and the Public Curator; the minutes must be accompanied with a notice of at least 10 days of the date of deposit of the minutes at the office of the court. The

notice must also mention that in the absence of opposition within 10 days of the deposit of the minutes, the judge or the clerk may accept the conclusions without further delay.

“863.10. The court is seized of the matter upon the deposit of the notary’s minutes, subject to article 863.11.

In the absence of opposition within 10 days of the deposit of the minutes, the judge or the clerk may accept or reject the conclusions set out in the notary’s minutes and make all orders necessary to protect the rights of the parties for the period and on the conditions determined by the judge or clerk.

The clerk must give notice without delay to the interested persons of any order so made or judgment so rendered.

“863.11. The minutes of the probate of a holograph will or a will made in the presence of witnesses are deposited solely for publication purposes.

“863.12. The original or a copy of the application, of the notice and of the notary’s minutes must be notified to the interested persons in accordance with articles 146.1 and 146.2.”

4. Article 872 of the said Code is amended by replacing “and” in the second line by “may be presented to the judge or clerk or to a notary;”.

5. Article 874 of the said Code is amended by striking out the second sentence.

6. The said Code is amended by inserting, after article 876.1, the following:

“CHAPTER VI.1

“TUTORSHIP TO MINORS

“876.2. Where an application relating to the appointment or replacement of a tutor, a tutor *ad hoc* or a tutor to property is presented to a notary, the notary must serve the application on the minor, if the minor is 14 years of age or over, and notify the application to the persons mentioned in the first paragraph of article 226 of the Civil Code, and call the latter persons to a meeting of relatives, persons connected by marriage or friends to establish tutorship to the minor and form the tutorship council. If the tutor, the tutor *ad hoc* or the tutor to property is being replaced, the notary must also notify the application to the Public Curator.”

7. The said Code is amended by inserting, after article 877, the following:

“877.0.1. Where an application for the institution or review of protective supervision of a person of full age is presented to a notary, the notary must prepare a declaration stating the facts on which the application for the institution or review of protective supervision of a person of full age is based, and must serve the declaration on the person of full age and notify the declaration to a reasonable member of the person’s family, to the Public Curator and to one of the persons mentioned in article 15 of the Civil Code ; the declaration must be accompanied with a notice of a meeting of relatives, persons connected by marriage or friends.”

8. Article 878 of the said Code is amended

(1) by replacing “or clerk” in the second line of the first paragraph by “, clerk or notary”;

(2) by moving the second sentence of the first paragraph to the beginning of the second paragraph and by adding, at the end, the following: “If no examination takes place, the judgment mentions that fact and indicates the reason why the person was not examined.”;

(3) by inserting, after the second paragraph, the following :

“Where the application is presented to a notary, the notary may not delegate responsibility for the examination to another notary except to avoid expense of travel arising from the distance at which the person of full age is residing. In all cases, the notary draws up the minutes of the examination of the person of full age or the reasons why the person was not examined.”

9. The said Code is amended by inserting, after article 878, the following :

“878.0.1. The notary must obtain the medical and psychosocial assessment, the examination of the person of full age and the other relevant documents and report thereon to the meeting of relatives, persons connected by marriage and friends.”

10. Article 878.1 of the said Code is amended by adding the following :

“Upon ascertaining the necessity of providing representation to the incapable person of full age, the notary must relinquish the application, inform the interested persons and transfer the matter to the competent court, which is seized of the matter upon the deposit of the notary’s minutes.”

11. Article 878.2 of the said Code is amended by inserting “to the court” after “application”.

12. Article 880 of the said Code is amended by inserting “by the notary to whom the application is presented or” after “are called” in the second line.

13. The said Code is amended by inserting, after article 884.6, the following :

“884.7. An application for the recording of the coming into effect of a mandate given in anticipation of the mandator’s incapacity or of the declaration of the cessation of the effects or the revocation of such a mandate may also be presented to a notary.

The application is served by the notary on the mandator and notified by the notary to the mandatary and, where applicable, to the substitute mandatary designated by the mandator, the Public Curator and one of the persons mentioned in article 15 of the Civil Code.

“884.8. The notary must obtain a medical and psychosocial assessment ascertaining the mandator’s incapacity and the original or an authentic copy of the mandate. Where the mandate was given before witnesses, the existence and validity of the mandate are verified by the notary.

In all cases, the notary must, in accordance with article 878, examine the mandator and determine whether the mandator is capable or incapable of taking care of himself or herself or of administering his or her property. The minutes of the examination of the mandator are drawn up by the notary.”

14. Article 885 of the said Code is amended by replacing “of Québec” in the second line by “or in this Book”.

15. The said Code is amended by inserting, after article 887, the following :

“887.1. Where a holograph will or a will made in the presence of witnesses is probated by a notary, on the application of any interested person, the notary notifies to the known heirs and successors a notice of probate to which a copy of the will is attached. Any observations or representations which those persons wish to make must be made, orally or by any other means of communication, within 10 days after notification of the notice of probate.”

16. Article 888 of the said Code is amended by adding the following :

“Where an application is presented to a notary, the clerk may exempt the notary from notifying all of the known successors if it would be impractical or too onerous to call all of them to the probate of the will, and may determine the persons who will be notified.”

17. Article 889 of the said Code is replaced by the following :

“889. The original of the will is examined by the clerk or by the notary. If the will is deposited with a notary, the clerk may order the notary to file the will at the office of the court or to deliver it to the notary designated by the clerk. However, a will deposited with a notary may not be probated by that notary or by a member of that notary’s firm of notaries.”

18. Article 890 of the said Code is amended by adding the following :

“The will probated by a notary together with the minutes of the probate are kept in the records of the notary ; the latter must issue certified copies of the will and of the minutes of the probate to any interested person who so requests.

The notary is also required to file a certified copy of the will and minutes at the office of the court of the district in which the testator was domiciled or, if the testator was not domiciled in Québec, at the office of the court of the district in which the testator died or in which the testator left any property.”

19. Article 892 of the said Code is amended by inserting “or from a notary” after “domicile”.

20. Article 894 of the said Code is amended by adding the following :

“Where an application is presented to a notary, the notary notifies the application to the liquidator of the succession, if that person is known, and to all of the known heirs or legatees by particular title residing in Québec.”

21. Article 896 of the said Code is amended by replacing the second sentence of the first paragraph by the following : “The notary is also required to issue certified copies to any person who so requests. However, if the letters of verification are contested, no copy may be issued before the application is disposed of.”

22. Article 200 of the Civil Code of Québec (1991, chapter 64) is amended by inserting “, by a mandate given in anticipation of the mandator’s incapacity” after “will” in the second line.

23. Article 201 of the said Code is amended

(1) by replacing “if he” in the first paragraph by “or to the last parent who is able to exercise tutorship, as the case may be, if that parent” ;

(2) by inserting “or lose the ability to exercise tutorship during the same event” after “simultaneously” in the second paragraph.

24. Article 202 of the said Code is amended by striking out “, after the death of the last surviving parent” at the end of the first paragraph.

25. Article 266 of the said Code is amended by replacing “tutorship council” in the second line of the second paragraph by “meeting of relatives, persons connected by marriage or friends”.

26. Article 777 of the said Code is amended by adding the following :

“The designation or replacement of the liquidator of the succession is published in the register of personal and movable real rights and, where applicable, in the land register.”

27. Section 31 of the Notarial Act (R.S.Q., chapter N-2) is amended by striking out subsection 1.

28. The Bureau of the Chambre des notaires du Québec shall make regulations approved by the Government determining the conditions that a notary must meet to be certified as regards the institution and review of protective supervision and mandates in anticipation of incapacity.

No such regulation may be adopted unless all members of the order were forwarded a copy of the proposed regulation by the secretary of the professional order at least 30 days before its adoption.

For the purposes of the Regulations Act (R.S.Q., chapter R-18.1), a proposed regulation may be published in accordance with section 8 of that Act before having been adopted by the Bureau ; where that is the case, it is the proposed regulation forwarded by the secretary to the members of the order that is subject to the publication requirement under that section.

29. The Government may make regulations establishing a tariff of fees payable for professional services in connection with applications concerning the institution or review of protective supervision or concerning a mandate in anticipation of incapacity.

30. The provisions of this Act come into force on the date or dates to be fixed by the Government, except section 28 which comes into force on 21 October 1998.