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# NATIONAL ASSEMBLY

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SECOND SESSION

THIRTY-SIXTH LEGISLATURE

## **Bill 50**

(2002, chapter 19)

### **An Act to amend the Civil Code and other legislative provisions**

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**Introduced 8 November 2001**

**Passage in principle 7 May 2002**

**Passage 13 June 2002**

**Assented to 13 June 2002**

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## EXPLANATORY NOTES

*This bill makes corrections and adjustments to certain provisions of the Civil Code.*

*First, the discretionary power of the court as it relates to confinement in an institution is better defined: the court will refuse to authorize confinement, even in the absence of a contrary medical opinion, unless it itself has serious reasons to believe that the person is dangerous and that confinement is necessary. Second, in the case of an action relating to filiation, the bill confers on the court the power to order an analysis enabling filiation to be established through genetic profiling, and specifies the consequences of an unjustified refusal to submit to such an analysis.*

*As regards the partition of the family patrimony, the bill provides that the payment of contributions into a pension plan entails the accrual of benefits under the pension plan. Moreover, the bill makes a creditor who takes a fraction of divided ownership in payment subject to the same rules concerning common expenses as any other acquirer of such a fraction. As well, it states the effect of the unilateral revocation of a mandate despite an undertaking to the contrary. Furthermore, it specifies that the costs to which a hypothecary creditor is entitled do not include professional fees.*

*The bill repeals the articles of the Civil Code that relate to the sale of an enterprise. It amends the Archives Act in particular, to allow, subject to certain conditions, the disclosure for research purposes of documents deposited with or transferred to the keeper of the Archives nationales du Québec or certain public bodies. In addition, it exempts the collection, holding, use or communication of historical or genealogical information made for the legitimate information of the public from the application of the Act respecting the protection of personal information in the private sector.*

*The bill also contains technical and terminological amendments.*

**LEGISLATION AMENDED BY THIS BILL :**

- Civil Code of Québec ;
- Archives Act (R.S.Q., chapter A-21.1) ;
- Act respecting Roman Catholic cemetery companies (R.S.Q., chapter C-40.1) ;
- Act respecting the protection of personal information in the private sector (R.S.Q., chapter P-39.1).



## Bill 50

### AN ACT TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

**1.** Article 30 of the Civil Code of Québec (1991, chapter 64), amended by section 33 of chapter 75 of the statutes of 1997, is replaced by the following articles :

**“30.** Confinement in an institution following a psychiatric assessment may only be authorized by the court if both psychiatric reports conclude that confinement is necessary.

Even if that is the case, the court may not authorize confinement unless the court itself has serious reasons to believe that the person is dangerous and that the person’s confinement is necessary, whatever evidence may be otherwise presented to the court and even in the absence of any contrary medical opinion.

**“30.1.** A judgment authorizing confinement must also set the duration of confinement.

However, the person under confinement must be released as soon as confinement is no longer justified, even if the set period of confinement has not elapsed.

Any confinement required beyond the duration set by the judgment must be authorized by the court, in accordance with the provisions of article 30.”

**2.** Article 35 of the said Code is amended by striking out “or his heirs” in the second paragraph.

**3.** Article 415 of the said Code is amended by adding the following sentence at the end of the first paragraph : “The payment of contributions into a pension plan entails an accrual of benefits under the pension plan; so does the accumulation of service recognized for the purposes of a pension plan.”

**4.** Article 426 of the said Code is amended by replacing “, where that is the case” in the first paragraph by “or, where there are no such rules, according to the rules determined by the court seized of the application.”

**5.** The said Code is amended by inserting the following article after article 535

**“535.1.** Where the court is seized of an action concerning filiation, it may, on the application of an interested person, order the analysis of a sample of a bodily substance so that the genetic profile of a person involved in the action may be established.

However, where the purpose of the action is to establish filiation, the court may not issue such an order unless a commencement of proof of filiation has been established by the person having brought the action or unless the presumptions or indications resulting from facts already clearly established by that person are sufficiently strong to warrant such an order.

The court determines conditions for the sample-taking and analysis that are as respectful as possible of the physical integrity of the person concerned or of the body of the deceased. These conditions include the nature and the date and place of the sample-taking, the identity of the expert charged with taking and analyzing the sample, the use of any sample taken and the confidentiality of the analysis results.

The court may draw a negative presumption from an unjustified refusal to submit to the analysis ordered by the court.”

**6.** Article 1069 of the said Code is amended by replacing the first paragraph by the following paragraphs :

**“1069.** A person who acquires a fraction of divided co-ownership, by whatever means, including the exercise of a hypothecary right, is bound to pay all common expenses due in respect of that fraction at the time of the acquisition.

A person contemplating the acquisition of such a fraction may request from the syndicate of co-owners a statement of the common expenses due in respect of the fraction and the syndicate is thereupon authorized to provide the statement to him, provided the syndicate gives prior notice to the owner of the fraction or his successors ; in such a case, the prospective acquirer is only bound to pay the common expenses if the statement is provided to him by the syndicate within 15 days of the request.”

**7.** Article 1339 of the said Code is amended by replacing the part of paragraph 10 which begins with “presumed sound investments” by “investments presumed sound and that the fund or trust has fulfilled in the last three years the continuous disclosure requirements specified in the Securities Act”.

**8.** Articles 1764 and 1767 to 1778 of the said Code are repealed.

**9.** The said Code is amended by inserting the following article after article 2167:

**“2167.1.** During homologation proceedings or even before if a request for homologation is imminent and it is necessary to act to prevent serious harm to the mandator, the court may issue any order it considers necessary to ensure the personal protection of the mandator, his representation in the exercise of civil rights or the administration of his property.

An act under which the mandator has entrusted the administration of his property to another person continues to produce its effects notwithstanding the proceedings, unless the act is revoked by the court for a serious reason.”

**10.** Article 2179 of the said Code is amended by replacing the third paragraph by the following paragraph :

“Unilateral revocation or renunciation by the mandator or the mandatary, as the case may be, despite his undertaking terminates the mandate.”

**11.** Article 2667 of the said Code is amended by replacing “incurred for recovering or” by “, other than extra-judicial professional fees, incurred for their recovery or for”.

**12.** Article 2762 of the said Code is amended by adding the following paragraph :

“Notwithstanding any stipulation to the contrary, costs exclude extra-judicial professional fees payable by the creditor for services required by the creditor in order to recover the capital and interest secured by the hypothec or to conserve the charged property.”

**13.** Article 3005 of the said Code, amended by section 43 of chapter 42 of the statutes of 2000, is again amended by replacing the first paragraph by the following paragraph :

**“3005.** A summary certified by a notary may set forth the lot number assigned to the immovable in which the right is held in the cadastre or the original survey, or the serial land file number assigned to the immovable with, if applicable, its description by metes and bounds, or may state the geographic coordinates or the plane rectangular coordinates by which the immovable may be described, even if such information does not appear in the document summarized.”

**14.** Article 3036 of the said Code, amended by section 67 of chapter 42 of the statutes of 2000, is again amended by replacing the second paragraph by the following paragraph :

“The description of an immovable by reference to the original survey or by means of geographic coordinates or plane rectangular coordinates is nevertheless admissible in a territory without a cadastral survey, provided that the description, which must also state that no land file exists, allows the immovable to be properly identified and its relative position to be properly

located. Where the description of an immovable by reference to the original survey refers to parts of lots, it must be completed by a description by metes and bounds and the measurements of each of those parts.”

#### AMENDMENTS TO THE ENGLISH TEXT OF THE CIVIL CODE

##### **15.** The English text of the Civil Code is amended

(1) by replacing “material needs” in the second paragraph of article 33 by “physical needs”;

(2) by replacing “degree of consanguinity” in the first paragraph of article 115 by “family relationship”;

(3) by replacing “in good working order” in the second paragraph of article 213 by “in good order”;

(4) by replacing “physical well-being” in the first paragraph of article 260 by “material well-being”;

(5) by replacing “protective supervision is terminated” in the second sentence of article 280 by “protective supervision is modified or terminated” and by striking out “of the termination” in the last sentence of that article;

(6) by replacing “or to administer” in the first paragraph of article 281 by “and to administer”;

(7) by replacing “in the best interest” in the second paragraph of article 322 by “in the interest”;

(8) by replacing “demand the revocation of” in article 332 by “contest”;

(9) by replacing “the expenses reasonably” in the third paragraph of article 352 by “the useful expenses”;

(10) by replacing “necessary conditions for its formal validity” in the first paragraph of article 380 by “necessary conditions for its formation”;

(11) by replacing “support payments” in the first and second paragraphs of article 596 by “arrears”;

(12) by replacing “is null” in article 759 by “is without effect”;

(13) by replacing “is null” in the first paragraph of article 760 by “is without effect”;

(14) by replacing “null” in the first and second paragraphs of article 761 by “without effect”;

(15) by replacing “is null” in article 762 by “is without effect”;



- (16) by replacing “is null” at the end of article 778 by “is deemed unwritten”;
- (17) by replacing “is null” in the first sentence of the second paragraph of article 870 by “is without effect”;
- (18) by replacing “and forming” in the first paragraph of article 900 by “and anything forming”;
- (19) by replacing the first paragraph of article 934 by the following paragraph:
- “934.** Things without an owner are things belonging to no one, such as animals in the wild, or formerly in captivity but returned to the wild, and aquatic fauna, and things abandoned by their owner.”;
- (20) by replacing “The share of a fraction in the common portions may not” at the beginning of article 1048 by “The share of the common portions appurtenant to a fraction may not”;
- (21) by replacing “is null” in article 1049 by “is without effect”;
- (22) by replacing “structural defects” in article 1077 by “construction defects”;
- (23) by replacing “structural defects” in article 1081 by “construction defects”;
- (24) by replacing “is null” at the end of article 1102 by “is without effect”;
- (25) by replacing “is null” and “is also null” in the first and second paragraphs of article 1216 by “is deemed unwritten” and “is also deemed unwritten”;
- (26) by replacing “for value” in the second paragraph of article 1315 by “for valuable consideration”;
- (27) by inserting “by such fault” after “another person” in the second paragraph of article 1457;
- (28) by replacing “or that he was not neglectful” in the second paragraph of article 1473 by “and that he was not neglectful”;
- (29) by inserting “there” after “to perform the obligation” in the first paragraph of article 1577;
- (30) by replacing “holder” in article 1612 by “owner”;
- (31) by replacing “fault” in article 1624 by “act or omission”;
- (32) by replacing “the debt” at the end of article 1682 by “his claim”;

(33) by replacing “loss of the leased property” in the first paragraph of article 1862 by “loss affecting the leased property”;

(34) by replacing “reasonable ground” in the third paragraph of article 2065 by “serious reason”;

(35) by striking out “representative or” in the second paragraph of article 2097

(36) by replacing “are solidarily liable” in article 2120 by “are jointly liable”;

(37) by replacing “physical well-being” in article 2131 by “material well-being”;

(38) by replacing “act performed” in the second paragraph of article 2197 by “act concluded”;

(39) by replacing “method or table” in the first paragraph of article 2415 by “method and table”;

(40) by replacing “is null” in the first paragraph of article 2649 by “is without effect”;

(41) by replacing “for recovering or” in article 2667 by “for their recovery or for”;

(42) by replacing “new debts” and “such debts” in the first paragraph of article 2676 by “subsequent claims” and “such claims”;

(43) by replacing “the grantor, the debtor” in the second paragraph of article 2779, amended by section 716 of chapter 57 of the statutes of 1992, by “the grantor or the debtor”;

(44) by replacing “its content cannot be established” in the second paragraph of article 2809 by “its content has not been established”;

(45) by replacing “in proportion to the amount” in the second clause of article 2953 by “in proportion to the value”;

(46) by replacing “the act was performed” in article 3086 by “the act was formed”;

(47) by replacing “the act was performed” in article 3087 by “the act was formed”;

(48) by replacing “is enforceable” in article 3163 by “is recognized”.

## MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

**16.** Section 19 of the Archives Act (R.S.Q., chapter A-21.1) is amended

(1) by replacing “not later than 150 years after their date” by “100 years after their date or 30 years after the death of the person concerned. However, no information relating to the health of a person may be disclosed without the consent of the person concerned until 100 years have elapsed since the date of the document”;

(2) by adding the following paragraph :

“Notwithstanding the first paragraph, the documents may be disclosed for research purposes before the time specified has elapsed if the personal information is not structured so as to allow retrieval by reference to a person’s name or identifying code or symbol and the information cannot be retrieved by means of such a reference. The person to whom the documents are disclosed must preserve the confidentiality of the personal information throughout the period during which it may not be disclosed without the consent of the person concerned.”

**17.** Section 26 of the said Act is amended by adding “or 100 years from the date of the document in the case of information relating to the person’s health” at the end of the second paragraph.

**18.** Section 28 of the Act respecting Roman Catholic cemetery companies (R.S.Q., chapter C-40.1) is amended by replacing “by any company” in the second line of the second paragraph by “by any legal person”.

**19.** Section 1 of the Act respecting the protection of personal information in the private sector (R.S.Q., chapter P-39.1) is amended by replacing “journalistic material collected, held, used or communicated for the purpose of informing the public” at the end of the third paragraph by “journalistic, historical or genealogical material collected, held, used or communicated for the legitimate information of the public”.

**20.** The said Act is amended by inserting the following section after section 18.1

**“18.2.** A person carrying on an enterprise may, without the consent of the person concerned, communicate personal information contained in a file concerning another person to an archival agency if the archival agency is a person carrying on an enterprise whose object is the acquisition, preservation and distribution of documents for their general informational value and if the information is communicated as part of the transfer or deposit of the archives of the enterprise.

A person carrying on an enterprise may also communicate personal information to any person without the consent of the person concerned if the document containing the information is more than 100 years old or if more than 30 years have elapsed since the death of the person concerned. However, no information relating to a person's health may be communicated without the consent of the person concerned unless 100 years have elapsed since the date of the document.

Notwithstanding the first and second paragraphs, the information may be communicated for research purposes, without the consent of the person concerned, before the time specified has elapsed if the documents containing the information are not structured so as to allow retrieval by reference to a person's name or identifying code or symbol and the information cannot be retrieved by means of such a reference. The person to whom the information is communicated must preserve the confidentiality of the personal information throughout the period during which it may not be communicated without the consent of the person concerned."

**21.** This Act comes into force on 13 June 2002.