



NATIONAL ASSEMBLY

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FORTY-FIRST LEGISLATURE

Bill 103

(2016, chapter 19)

An Act to strengthen the fight against transphobia and improve the situation of transgender minors in particular

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EXPLANATORY NOTES

This Act amends the Civil Code to provide that a minor child 14 years of age or over may act alone in applying for a change of name to the registrar of civil status and that, in such a case, the application will not be granted, except for a compelling reason, if both the minor child's parents, as legal tutors, or the tutor, if any, have not been notified of the application or if one of them objects to it.

The Civil Code is amended to allow a parent who is aware that the minor child's other parent intends to object to a change of name for the minor child to submit an application for a change of name to the court rather than to the registrar of civil status.

The Civil Code is also amended to allow a minor child to obtain from the registrar of civil status a change of designation of sex as it appears in the act of birth. More specifically, the Act provides that an application for a change of designation of sex for a minor child under 14 years of age may be made by the child's tutor and that the change will not be granted, except for a compelling reason, if the other tutor has not been notified of the application or objects to it. In addition, a tutor who is aware that the other tutor intends to object to the change of designation of sex of a minor child under 14 years of age may submit an application to the court rather than to the registrar of civil status. An application for a minor child who is 14 years of age or over may be made by the child alone or by the child's tutor, with the child's consent.

The Charter of human rights and freedoms is amended to provide for an explicit protection against discrimination based on gender identity or expression.

The Code of Civil Procedure is also amended to provide that when a court is seized of an application for a change of designation of sex for a minor child, the hearing is held in camera, access to the court record is restricted and the anonymity of the parties is protected.

Lastly, the Regulation respecting change of name and of other particulars of civil status is amended to prescribe the conditions that a minor child will be required to meet to obtain a change of designation of sex as it appears in the child's act of birth and also to ensure consistency with the amendments made to the Civil Code.

LEGISLATION AMENDED BY THIS ACT:

- Civil Code of Québec;
- Charter of human rights and freedoms (chapter C-12);
- Code of Civil Procedure (chapter C-25.01).

REGULATION AMENDED BY THIS ACT:

- Regulation respecting change of name and of other particulars of civil status (chapter CCQ, r. 4).

Bill 103

AN ACT TO STRENGTHEN THE FIGHT AGAINST TRANSPHOBIA AND IMPROVE THE SITUATION OF TRANSGENDER MINORS IN PARTICULAR

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CIVIL CODE OF QUÉBEC

1. Article 59 of the Civil Code of Québec is amended

(1) in the first paragraph,

(a) by replacing “A person of full age” by “A person”;

(b) by replacing “est domicilié” in the French text by “est domiciliée”;

(c) by replacing “apply for a change of name” by “be the subject of an application for a change of name”;

(d) by striking out the last sentence;

(2) by replacing the second paragraph by the following paragraph:

“A child under one year of age, born and domiciled in Québec, is considered to have been domiciled in Québec for at least one year.”

2. Article 60 of the Code is replaced by the following article:

“**60.** An application for a change of name for a minor child may be made by the child’s tutor or by the minor child alone if the child is 14 years of age or over.

An application for a change of the surname of the father or mother as declared in the act of birth of a minor child is also valid for the minor child if the child bears the same surname or part of that surname.”

3. Article 61 of the Code is amended, in the first paragraph,

(1) by replacing “ses motifs” in the French text by “les motifs au soutien de la demande”;

(2) by replacing “of his or her father and mother” by “of the father and mother of the person who is the subject of the application and, if applicable”;

(3) by replacing “his or her married or civil union spouse” by “that person’s married or civil union spouse”.

4. Article 62 of the Code is amended

(1) in the first paragraph,

(a) by replacing “the tutor” by “, as the case may be, the father and mother of the minor child as legal tutors, the tutor, if any.”;

(b) by replacing “has not been notified of the application or objects to it” by “have not been notified of the application or if any of those persons object to it”;

(2) in the second paragraph,

(a) by replacing “However,” by “The same applies.”;

(b) by replacing “only the minor has the right to object” by “except with respect to the right to object reserved to the tutor of a minor under 14 years of age or to the minor 14 years of age or over”.

5. Article 63 of the Code is amended by replacing “sexual identity” in subparagraph 2 of the first paragraph by “gender identity”.

6. The Code is amended by inserting the following article after article 66:

“66.1. A person who wishes to file an application for a change of name for a minor child by way of administrative process may, if an objection is made, as the case may be, by the father and mother as legal tutors, by the tutor, if any, or by the minor 14 years of age or over, submit the application to the court before it is filed with the registrar of civil status.”

7. Article 67 of the Code is amended by replacing “sexual identity” in subparagraph 2 of the second paragraph by “gender identity”.

8. Article 71 of the Code is amended

(1) by replacing “sexual identity” in the first paragraph by “gender identity”;

(2) by replacing “only a person of full age who has been domiciled” in the third paragraph by “only a person who has been domiciled”;

(3) by adding the following paragraphs at the end:

“A child under one year of age, born and domiciled in Québec, is considered to have been domiciled in Québec for at least one year.

The conditions prescribed by government regulation that must be met to obtain such changes may vary, in particular according to the age of the person who is the subject of the application.”

9. The Code is amended by inserting the following article after article 71:

“**71.1.** An application for a change of designation of sex for a minor child may be made by the minor alone if the minor is 14 years of age or over or by the minor’s tutor with the minor’s consent. If the minor is under 14 years of age, the application must be made by the minor’s tutor.

In the latter case, the change of designation of sex is not granted, except for a compelling reason, if the other tutor has not been notified of the application or objects to it.”

10. The Code is amended by inserting the following article after article 73:

“**73.1.** A tutor who wishes to file an application for a change of designation of sex for a minor under 14 years of age may, if the other tutor objects to it, submit the application to the court before an application to obtain such a change is filed with the registrar of civil status.”

CHARTER OF HUMAN RIGHTS AND FREEDOMS

11. Section 10 of the Charter of human rights and freedoms (chapter C-12) is amended by inserting “gender identity or expression,” after “sex,” in the first paragraph.

CODE OF CIVIL PROCEDURE

12. Article 15 of the Code of Civil Procedure (chapter C-25.01) is amended

(1) by inserting “or in matters regarding a change of designation of sex as it appears in a minor child’s act of birth” after “In family matters” in the first paragraph;

(2) by replacing “cette matière” in the second paragraph in the French text by “ces matières”.

13. Article 16 of the Code is amended by inserting “or in matters regarding a change of designation of sex as it appears in a minor child’s act of birth” after “In family matters” in the first paragraph and by inserting “or in a matter regarding a change of designation of sex as it appears in a minor child’s act of birth” after “in a family matter” in the last paragraph.

REGULATION RESPECTING CHANGE OF NAME AND OF OTHER PARTICULARS OF CIVIL STATUS

14. Section 2 of the Regulation respecting change of name and of other particulars of civil status (chapter CCQ, r. 4) is amended

(1) by striking out “to change the name of a person of full age only” in the introductory clause and by inserting “on the person who is the subject of the application” after “information” in the same clause;

(2) by replacing the second and third occurrences of “qu’il” in paragraph 1 in the French text by “qu’elle”;

(3) by replacing “il est domicilié” in paragraph 4 in the French text by “elle est domiciliée”;

(4) by replacing “il est devenu citoyen canadien, s’il est né” in paragraph 5 in the French text by “elle est devenue citoyenne canadienne, si elle est née”;

(5) by replacing “the applicant’s marital status and, if the applicant is married,” in paragraph 7 by “the person’s civil status and, if the person is married or in a civil union,” and by inserting “or civil union” after “marriage” in the same paragraph;

(6) by replacing “s’il en a” in paragraph 8 in the French text by “si elle en a”;

(7) by replacing “s’il a” and “qu’il” in paragraph 9 in the French text by “si elle a” and “qu’elle”, respectively;

(8) by replacing “il” in paragraph 10 in the French text by “elle”;

(9) by replacing “applicant” and “applicant’s” wherever they appear by “person” and “person’s”, respectively.

15. Section 3 of the Regulation is replaced by the following section:

“3. An application concerning a minor child must include the following information, in addition to the information required under section 2:

(1) the domiciliary address of the child’s father and mother on the date on which the application is filed;

(2) if the child’s father or mother has been deprived of parental authority by a judicial decision, an indication of that fact;

(3) if the child’s filiation has been changed by a judicial decision, an indication of that fact; and

(4) if the child has a tutor, a statement that a tutor has been appointed to the child, either by a judicial decision, or by will or by a declaration filed with the Public Curator in accordance with article 200 of the Civil Code, the tutor's name, the tutor's domiciliary address, the mode of appointment of the tutor and the effective date of the tutorship.

The application must also include the following information on the tutor who is making the application for the minor child:

- (1) the tutor's name, as stated in the tutor's act of birth;
- (2) the tutor's domiciliary address on the date on which the application is filed; and
- (3) the tutor's capacity in relation to that child."

16. Section 6 of the Regulation is replaced by the following section:

“6. The notice of application for a change of name must include the following information on the person who is the subject of the application:

- (1) the person's name, as stated in the person's act of birth;
- (2) the person's domiciliary address;
- (3) the name applied for with the registrar of civil status; and
- (4) the place and date of the notice.

Where the application is to change the name of a minor child, the notice of application must also include the name of the person making the application for the minor child, that person's domiciliary address and his or her capacity in relation to the child.

The notice of application must include the signature of the person making the application.”

17. Section 23 of the Regulation is amended by replacing “Sections 1, 2, 4 and 16” by “Divisions I and III and sections 12”.

18. Section 23.1 of the Regulation is amended

- (1) by inserting “made by a person 14 years of age or over” after “application” in the introductory clause;
- (2) by replacing “sexual identity” in paragraphs 1 and 2 by “gender identity”;
- (3) by adding the following paragraph at the end:

“If a tutor’s affidavit is in support of an application made by the tutor for a minor child, the affidavit must also attest that

(1) the designation of sex requested for the minor child is the designation that best corresponds to the child’s gender identity;

(2) the minor child assumes that gender identity;

(3) the tutor understands the seriousness of the minor child’s undertaking; and

(4) the tutor’s undertaking for the minor child is voluntary and his or her consent is given in a free and enlightened manner.”

19. Section 23.2 of the Regulation is amended

(1) by inserting “of a person of full age” after “act of birth”;

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

“An application for a change of the designation of sex for a minor child must be accompanied by, in addition to the documents referred to in section 4, a letter from a physician, a psychologist, a psychiatrist, a sexologist or a social worker authorized to practise in Canada or in the State in which the child is domiciled who declares having evaluated or followed the child and is of the opinion that the change of designation is appropriate.”

20. Section 23.3 of the Regulation is amended by replacing “or a sexologist” by “, a sexologist or a social worker”.

21. This Act comes into force on 10 June 2016.