

Regulation respecting information on the profile of a person who has contributed to the procreation of a child in the context of a parental project

Civil Code of Québec
(Civil Code, art. 541.13, 2nd par., art. 541.32, 1st par., and art. 542.1, 1st par.; 2023, chapter 13, arts. 20 and 21)

Code of Civil Procedure
(chapter C-25.01, art. 431.0.3)

1. This Regulation determines the information on the profile of the following persons:

(1) the person who provided their reproductive material in the context of a parental project involving the use of the reproductive material of a third person;

(2) in the context of a parental project involving surrogacy:

(a) the woman or person who agreed to give birth to the child; and

(b) the party to the surrogacy agreement, other than the woman or person who agreed to give birth to the child, who provided their reproductive material.

2. The profile of a person who has contributed to the procreation of a child includes

(1) the following general information:

(a) the third person's age;

(b) the third person's ethnic origin;

(c) the third person's civil status;

(d) the third person's level of education and, where applicable, their diplomas and the subject studied; and

(e) the third person's occupation, where applicable;

(2) the following information relating to physical characteristics:

(a) the third person's height;

(b) the third person's skin colour;

(c) the third person's eye colour; and

(d) the third person's hair colour and texture;

(3) information relating to the third person's personality traits, special skills, preferences and hobbies, where applicable.

3. This Regulation comes into force on 6 March 2024. However, in respect of a woman or person who agreed to give birth to a child and who is domiciled outside Québec, the Regulation applies as of the date of coming into force of section 20 of the Act to reform family law with regard to filiation and to protect children born as a result of sexual assault and the victims of that assault as well as the rights of surrogates and of children born of a surrogacy project (2023, chapter 13), insofar as it enacts the provisions of article 541.32 of the Civil Code.

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Gouvernement du Québec

O.C. 242-2024, 7 February 2024

Civil Code of Québec

Parental projects involving surrogacy in which the parties to the agreement are domiciled in Québec

Regulation respecting parental projects involving surrogacy in which the parties to the agreement are domiciled in Québec

WHEREAS, under the first paragraph of article 541.3 of the Civil Code, as made by section 20 of the Act to reform family law with regard to filiation and to protect children born as a result of sexual assault and the victims of that assault as well as the rights of surrogates and of children born of a surrogacy project (2023, chapter 13), the contribution made to the parental project by the woman or the person who has agreed to give birth to a child must be gratuitous, they are, however, entitled, in accordance with the standards determined by government regulation, to the reimbursement or payment of certain expenses and to compensation, where applicable, for loss of work income resulting from that contribution;

WHEREAS, under the fourth paragraph of article 541.9 of the Civil Code, as made by section 20 of the Act to reform family law with regard to filiation and to protect children born as a result of sexual assault and the victims of that assault as well as the rights of surrogates and of children born of a surrogacy project, a government regulation may determine, among other things, the content of the document stating the consent of the woman or the person who gave birth to the child;

WHEREAS, under the third paragraph of article 541.13 of the Civil Code, as made by section 20 of the Act to reform family law with regard to filiation and to protect

children born as a result of sexual assault and the victims of that assault as well as the rights of surrogates and of children born of a surrogacy project, a government regulation may provide for any other standard relating to the content of the surrogacy agreement or the deposit, in a trust account of the notary who executes the agreement, of an amount to allow the performance of the obligations of the person alone or the spouses who formed the parental project;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Regulation respecting parental projects involving surrogacy in which the parties to the agreement are domiciled in Québec was published in Part 2 of the *Gazette officielle du Québec* of 1 November 2023 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Justice:

THAT the Regulation respecting parental projects involving surrogacy in which the parties to the agreement are domiciled in Québec, attached to this Order in Council, be made.

DOMINIQUE SAVOIE
Clerk of the Conseil exécutif

Regulation respecting parental projects involving surrogacy in which the parties to the agreement are domiciled in Québec

Civil Code of Québec
(Civil Code, art. 541.3, 1st par., art. 541.9, 4th par. and art. 541.13, 3rd par.; 2023, chapter 13, s. 20)

CHAPTER I GENERAL

DIVISION I REIMBURSEMENT OR PAYMENT OF CERTAIN EXPENSES AND PAYMENT OF COMPENSATION FOR LOSS OF WORK INCOME

1. The following expenses must be reimbursed to the woman or the person who has agreed to give birth to a child in consideration of their contribution to a parental project involving surrogacy, or paid to the third person who has provided the service or product:

(1) expenses incurred to obtain any product or service provided by a professional who is a member of a professional order and who, in the practice of their profession, is authorized by law to assess the physical condition of a person, provide or contribute to pregnancy care, conduct or contribute to conducting deliveries, and provide postnatal care and other health care;

(2) expenses incurred to obtain any drug or device within the meaning of section 2 of the Food and Drugs Act (R.S.C., 1985, c. F-27);

(3) expenses relating to the delivery, other than the expenses referred to in subparagraphs 1 and 2;

(4) fees and disbursements incurred for any legal service, including fees and disbursements incurred to administer amounts deposited in a trust account, where applicable.

In addition, the following expenses must be paid for that reason:

(1) expenses relating to an assisted procreation activity within the meaning of paragraph 1 of section 2 of the Act respecting clinical and research activities relating to assisted procreation (chapter A-5.01), payable to the centre for assisted procreation;

(2) the fees and expenses relating to the information meeting on the psychosocial implications of the surrogacy project and of the ethical issues it involves, payable to the professional who is a member of a professional order designated by the Minister of Justice in accordance with article 541.11 of the Civil Code;

(3) the charges for the transportation of an in vitro embryo or gametes, including expenses associated with the transportation, payable to any person who incurred them, except the woman or the person who has agreed to give birth to the child.

2. If the parties to the surrogacy agreement so agree, the following expenses may be reimbursed to the woman or the person who has agreed to give birth to a child in consideration of their contribution to a parental project involving surrogacy, or paid to the third person who has provided the service or product:

(1) expenses incurred to obtain any product or service prescribed in writing by a professional who is a member of a professional order and who, in the practice of their profession, is authorized by law to assess the physical condition of a person, provide pregnancy care, conduct deliveries, and provide postnatal care and other health care, as well as expenses associated with obtaining a prescription, where applicable;

(2) fees and disbursements incurred for professional consultation services, except those referred to in paragraph 1 of this section and in subparagraph 4 of the first paragraph of section 1;

(3) expenses relating to the services of a doula;

(4) expenses relating to obtaining or confirming medical records or other documents;

(5) expenses relating to prenatal exercise classes;

(6) expenses relating to maternity clothes or clothes required by the pregnancy;

(7) grocery expenses relating to the pregnancy, excluding expenses incurred for non-food items;

(8) travel expenses, in particular transportation charges and parking, meal and lodging expenses;

(9) expenses incurred to care for a dependent or a companion animal;

(10) telecommunications expenses relating to communications between the woman or the person who has agreed to give birth to the child and the person alone or the spouses who formed the parental project, or relating to the pregnancy or the delivery;

(11) expenses relating to health insurance, life insurance, disability insurance or travel insurance.

3. The maximum amount of the transportation charges provided for in subparagraph 3 of the second paragraph of section 1 and in paragraph 8 of section 2 that must be paid or may be reimbursed or paid for the use of an automobile, except an automobile used by a transportation service that provides a receipt, corresponds, for the year during which transportation took place, to the aggregate of the amounts that would be determined for that year under section 133.2.1R1 of the Regulation respecting the Taxation Act (chapter I-3, r. 1) if that section applied to such payment or reimbursement.

4. The woman or the person who has agreed to give birth to the child in the context of a parental project involving surrogacy is entitled to the payment of a financial contribution as compensation for loss of work income resulting from their contribution to the project due to a medical appointment in connection with the pregnancy or a period of work stoppage, where a physician attests that the woman or the person attended such a medical appointment or that, by reason of the pregnancy, the work of the woman or the person may involve a risk to their health or to that of the child to be born.

5. The expenses referred to in sections 1 and 2 are reimbursed or paid by the person alone or the spouses who formed the parental project or, where applicable, through the intermediary of a professional who is a member of a professional order and who holds the amounts in a trust account, except where those expenses are covered and reimbursed or paid by a public or private plan, in which case only the amount that has not been reimbursed or paid by the plan may be reimbursed or paid. The same applies to the compensation for loss of work income referred to in section 4.

6. A claim for the reimbursement of the expenses provided for in the first paragraph of section 1 and in section 2 is admissible only on receipt of the following documents by the person alone or the spouses who formed the parental project:

(1) a declaration by the woman or the person who has agreed to give birth to the child in the context of the parental project, dated and signed by the woman or the person, containing

(a) the name and address of the woman or the person;

(b) for each expense concerned,

i. its nature;

ii. the amount incurred and, if less than the amount incurred, the amount requested for reimbursement;

iii. the date on which it was incurred; and

iv. a statement indicating that the amount requested has not been paid or reimbursed to them, in whole or in part, by any other source;

(c) in the case of transportation expenses incurred for the use of an automobile, except an automobile used by a transportation service that provides a receipt, the following additional information:

i. the addresses of the points of departure and destination; and

ii. the number of kilometres travelled between those two points;

(d) a statement indicating that all the expenses have been incurred by reason of their contribution to the parental project;

(e) a statement indicating that all the information contained in the declaration is accurate and complete to the best of their knowledge;

(2) where applicable, a copy of the written prescription referred to in paragraph 1 of section 2 relating to a product or service concerned by the claim for reimbursement;

(3) all receipts relating to the expenses requested for reimbursement, indicating the date on which the expenses were incurred and, where the amount requested has otherwise been paid or has otherwise been reimbursed in part to the woman or person by a public or private plan, all supporting documents proving the amount that remains to be reimbursed.

7. A claim for the payment of a compensation for loss of work income provided for in section 4 is admissible only on receipt by the person alone or the spouses who formed the parental project of the following documents:

(1) a declaration by the woman or the person who has agreed to give birth to the child in the context of the parental project, dated and signed by the woman or the person, containing

(a) the name and address of the woman or the person;

(b) the date of the medical appointment in connection with the pregnancy or the beginning and end dates of the period during which the woman or the person cannot work for the reason certified by a physician;

(c) the amount of the compensation requested;

(d) a statement indicating that the woman or the person has not received compensation for the loss of work income, in whole or in part, from any other source; and

(e) a statement indicating that all the information contained in the declaration is accurate and complete to the best of their knowledge;

(2) the supporting documents corroborating the work income that the woman or the person would have earned had they not been absent due to a medical appointment in connection with the pregnancy or the period of work stoppage or, where applicable, the supporting documents corroborating the amount for which they have not been compensated, in whole or in part, by a public or private plan;

(3) a copy of the attestation by a physician that the woman or the person attended a medical appointment in connection with the pregnancy or that, by reason of the pregnancy, the work of the woman or the person may involve a risk to their health or to that of the child to be born.

8. The person alone or the spouses who formed the parental project or, where applicable, the professional who is a member of a professional order and who holds the amounts in a trust account, who reimburse the expenses or pay the compensation referred to in the declaration made in accordance with paragraph 1 of section 6 or section 7 must indicate in the declaration, as applicable, the amount reimbursed for each listed expense or the amount of the compensation paid, as well as the date of the reimbursement or payment, and sign the declaration.

When the woman or the person who has agreed to give birth to the child receives the reimbursement or compensation from the person alone or the spouses who formed the parental project, the woman or the person who has agreed to give birth to the child must give acquittance for the amount by signing the declaration.

9. The person alone or the spouses who formed a parental project involving surrogacy must prepare, for each reimbursement or payment made or compensation paid, a file containing all documents received for the purpose of the reimbursement, payment or compensation, and they must keep that file for 6 years following the date of the reimbursement, payment or compensation.

DIVISION II

CONSENT OF THE WOMAN OR THE PERSON WHO GAVE BIRTH TO THE CHILD IN THE CONTEXT OF A PARENTAL PROJECT INVOLVING SURROGACY

10. A notarial act or a private writing stating the consent of the woman or the person who gave birth to the child in the context of a parental project involving surrogacy, referred to in article 541.9 of the Civil Code, must contain a declaration that the woman or the person

(1) understands that they are the child's parent;

(2) understands that the child's filiation may be established with regard to the person alone or the spouses who formed the parental project only if the woman or the person consents to it;

(3) understands that their consent makes it possible to deem that the child's filiation is established as of the child's birth with regard to the person alone or the spouses who formed the parental project;

(4) understands that their bond of filiation with the child is thereby dissolved and deemed never to have existed; and

(5) gave free and enlightened consent.

11. If the consent of the woman or the person who gave birth to the child is given by a private writing before two witnesses, the writing must contain the name, capacity and address of the woman or the person as well as those of the witnesses.

The writing must also contain a declaration by the witnesses that they have no interest in the surrogacy project.

CHAPTER II SPECIAL PROVISIONS CONCERNING PARENTAL PROJECTS FOR THE LEGAL ESTABLISHMENT OF FILIATION

DIVISION I CONTENT OF THE SURROGACY AGREEMENT

12. A surrogacy agreement must contain an attestation from the parties that they were informed of the following rules and acknowledge that they apply to them notwithstanding any stipulation to the contrary:

(1) that the woman or the person who has agreed to give birth to the child in the context of the parental project involving surrogacy

(a) may, at any time before the child's birth, unilaterally terminate the agreement in accordance with article 541.8 of the Civil Code;

(b) must, for the parental project to be carried to completion, consent to their bond of filiation with regard to the child being deemed never to have existed and to the establishment of a bond of filiation with regard to the person alone or both spouses who formed the parental project, not later than 30 days from the birth of the child, but not before 7 days have elapsed since the birth;

(c) may not be remunerated for their involvement in the project and may only obtain the reimbursement or payment of the expenses and the payment of a compensation for loss of work income, in accordance with the rules set out in Division I of Chapter I;

(2) that the person alone or the spouses who formed the parental project

(a) may not unilaterally terminate the agreement;

(b) may not claim from the woman or the person who has agreed to give birth to the child reimbursement of the amounts they paid under the first paragraph of article 541.3 of the Civil Code for the sole reason that the project was not carried to completion;

(c) may not, in the event that the woman or the person who gave birth to the child gives their consent after the child's birth, refuse the filiation of the child being established with regard to them in accordance with the rules of the Civil Code, regardless of the circumstances;

(3) that, subject to the consent of the woman or the person who gave birth to the child, the filiation is established with regard to the person alone or both spouses who formed the parental project despite their death, their inability to act or their disappearance;

(4) that the parental project comprises all children born of it and it must not entail their being dissociated;

(5) that the information contained in the agreement is confidential, except where the communication of that information is permitted by law.

The surrogacy agreement also contains an attestation from the parties that they have been domiciled in Québec for at least one year prior to entering into the surrogacy agreement.

13. A surrogacy agreement must contain a declaration by the woman or the person who has agreed to give birth to the child in the context of a parental project involving surrogacy attesting that the woman or the person

(1) understands the risks associated with pregnancy;

(2) knows that the person alone or the spouses who formed the parental project are not liable for those risks;

(3) is 21 years of age or over;

(4) undertakes, in the event that the person alone or the spouses who formed the parental project are deceased or unable to act, to ensure that the director of youth protection is informed so that the child can be entrusted to the director, in accordance with article 541.14 of the Civil Code;

(5) where applicable, renounces the reimbursement or payment of the expenses or the payment of a compensation for loss of work income and, where applicable, the grounds for the renunciation.

DIVISION II DISBURSEMENT AND REMITTANCE OF THE AMOUNT HELD IN A TRUST ACCOUNT BY THE NOTARY

14. On receipt of an application for reimbursement made in accordance with section 6 or an application for payment made in accordance with section 7 by the woman or the person who has agreed to give birth to a child,

the person alone or the spouses who formed the parental project involving surrogacy must indicate, in the declaration made in accordance with paragraph 1 of section 6 or section 7, as applicable, the amount to be reimbursed for each expense requested or the amount of the compensation to be paid by the notary. The person alone or the spouses must then sign the declaration and transmit the completed application to the notary.

If the amounts requested by the woman or the person are accepted in whole by the person alone or the spouses, the application complies with the agreement and the evidence in support of the application is satisfactory, the notary disburses the amounts requested from the notary's trust account, remits them to the woman or the person, and completes the declaration in accordance with section 8.

If the amounts requested by the woman or the person are refused, in whole or in part, by the person alone or the spouses, but the application nonetheless complies with the agreement and the evidence in support of the application is satisfactory, the notary disburses the amounts requested from the notary's trust account in order to remit them to the woman or the person despite any provision to the contrary under the *Règlement sur la comptabilité en fidéicommiss des notaires* (chapter N-3, r. 5.2). The notary informs the person alone or the spouses thereof and completes the declaration in accordance with section 8. Despite the foregoing, if the application does not comply with the agreement or the evidence in support of the application is unsatisfactory, the notary informs the parties and retains the amount in dispute until the notary is informed of an agreement between the parties or a final decision by the court.

If the amounts requested by the woman or the person are accepted, in whole or in part, by the person alone or the spouses, but the application does not comply with the agreement or the evidence in support of the application is unsatisfactory, the notary informs the parties and retains the amount concerned until the agreement is modified or satisfactory evidence is received.

15. On receipt of an application for payment transmitted by the person alone or the spouses who formed the parental project involving surrogacy, and on receipt of the supporting documents, the notary disburses the amounts requested from the notary's trust account in order to remit them to either the person or the spouses so they can pay the third person who has provided the service or product, or directly to the third person who has provided the service or product.

If the person alone or the spouses fail to make such an application to the notary, the woman or the person who has agreed to give birth to the child may make the application

to the notary who, if the application complies with the agreement and the evidence in support of the application is satisfactory, disburses the amounts from the notary's trust account, remits them directly to the person who has provided the service or product, and informs the person alone or the spouses. Despite the foregoing, if the application does not comply with the agreement or the evidence in support of the application is unsatisfactory, the notary informs the parties and retains the amount in dispute until the notary is informed of an agreement or a final decision by the court.

16. On receipt of a declaration by the parties that all the expenses have been paid or reimbursed and, where applicable, that all financial contributions have been paid, the notary, where applicable, disburses the residue of the amount held by the person in order to remit it to the person alone or the spouses who formed the parental project.

CHAPTER III FINAL

17. This Regulation comes into force on 6 March 2024.
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Gouvernement du Québec

O.C. 245-2024, 7 February 2024

Health Insurance Act
(chapter A-29)

Regulation — Amendment

CONCERNING the Regulation to amend the Regulation respecting the application of the Health Insurance Act

WHEREAS, under subparagraph *c.2* of the first paragraph of section 69 of Health Insurance Act (chapter A-29), the Government may, after consultation with the Régie de l'assurance maladie du Québec or upon its recommendation, in addition to the regulatory powers conferred upon it by that Act, make regulations to determine in what cases and under what conditions assisted procreation services must be considered as insured services for the purposes of subparagraph *e* of the first paragraph of section 3 of that Act, in particular by setting the age of insured persons who may receive such services;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft regulation to amend the Regulation respecting the application of the Health Insurance Act was published in Part 2 of the *Gazette*