



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 96

**An Act to amend the Civil Code, the
Code of Civil Procedure and the Public
Curator Act as regards the protection of
persons**

Introduction

**Introduced by
Mr. Sébastien Proulx
Minister of Families**

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EXPLANATORY NOTES

This bill revises the legislative provisions relating to the protection of persons, in particular to encourage the close relations of the person concerned to assume the office of tutor, curator or mandatary and to foster their commitment to that person. It also simplifies the applicable procedures while modernizing the Public Curator's role.

The bill includes amendments relating to tutorship to minors. In the case of dative tutorship in particular, it gives the court the option of exempting the tutor from the obligations to establish a tutorship council and render an annual management account. It also provides that the Public Curator must be given at least 20 days' notice of the transmission of property to a minor, and gives the Public Curator the authority to determine the type of security required and its object if a tutorship council is not established within the prescribed period. It furthermore specifies the rules applicable to the remuneration of a dative tutor and the time within which a tutor must render an account of his or her management, and establishes the right of a tutor to property to take part in judicial proceedings.

Amendments concerning the protective supervision of a person of full age are also proposed. The court is authorized to reduce the number of persons to be called to a meeting of relatives, persons connected by marriage or a civil union, or friends, and the rules governing the replacement of a curator, tutor or adviser are relaxed. Measures are introduced that are better adapted to the situation of a person of full age, in particular in relation to medical and psychosocial reassessments. No longer needing assistance or representation is added to the reasons for which a person may be released from protective supervision, and it is provided that the court must specify the scope of a tutorship to property only.

The procedure for establishing tutorship councils is changed to replace the meeting quorum by the calling of a minimum number of relatives, persons connected by marriage or a civil union, or friends to attend the meeting.

The bill amends the rules governing protection mandates. More specifically, it lists certain elements that such a mandate may contain and imposes new obligations on the mandatary. It also sets out the criteria for the homologation or performance of a mandate and the

remedies available if the mandatary does not faithfully perform the mandate.

The Public Curator Act is amended to provide for exceptions to the Public Curator's supervisory obligations in relation to some tutorships and curatorships, expand information requirements and encourage the delegation of consent-granting authority with respect to care to the incapable person's close relations. Pilot projects for the delegation to a third party of tutorship or curatorship to persons of full age may also be implemented.

Finally, the bill contains a number of consequential amendments and transitional measures.

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec;
- Code of Civil Procedure (chapter C-25.01);
- Public Curator Act (chapter C-81).

Bill 96

AN ACT TO AMEND THE CIVIL CODE, THE CODE OF CIVIL PROCEDURE AND THE PUBLIC CURATOR ACT AS REGARDS THE PROTECTION OF PERSONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CIVIL CODE OF QUÉBEC

1. Article 87 of the Civil Code of Québec is amended by inserting “except those set out in articles 209.1 and 217,” after “required,” in the second paragraph.

2. Article 184 of the Code is amended by adding the following paragraph at the end:

“The court may, as of the institution of tutorship, fix such remuneration and the terms for its renewal by the tutorship council, if applicable.”

3. Article 188 of the Code is amended by striking out the first paragraph.

4. Article 205 of the Code is amended by inserting “or, if a tutorship council need not be established, on the advice of the meeting of relatives, persons connected by marriage or a civil union, or friends” after “council” in the second paragraph.

5. The Code is amended by inserting the following article after article 209:

“209.1. Where the property to be administered is worth less than \$25,000, on the advice of the meeting of relatives, persons connected by marriage or a civil union, or friends, the court may exempt a dative tutor from initiating the establishment of a tutorship council or rendering an annual management account. Similarly, on the application of the director of youth protection, the court may exempt the director or the person the director recommends as tutor from rendering an annual management account.”

6. Article 217 of the Code is replaced by the following article:

“217. Where the property is worth more than \$25,000, the liquidator of a succession which devolves or is bequeathed to a minor and the donor of property if the donee is a minor, or in all cases, any person who pays an indemnity for the benefit of a minor, shall notify the Public Curator and state

the value of the property or the amount of the indemnity, as the case may be, at least 20 days before the property is passed on or the indemnity is paid.

The 20-day notice period prescribed in the first paragraph does not apply to a gift *inter vivos* or to the payment of an indemnity to make good on the obligation of support that lies on the father or mother.”

7. Article 226 of the Code is amended by replacing the third paragraph by the following paragraph:

“Not fewer than five persons representing, as far as possible, the maternal and paternal lines shall be called to the meeting. The meeting shall be held with the persons in attendance, regardless of their number.”

8. The Code is amended by inserting the following article after article 233:

“233.1. If two or more tutors have been appointed for a minor and a disagreement arises between them, the tutorship council facilitates the settlement of the disagreement. If the tutors cannot agree, the court decides.”

9. Article 242 of the Code is amended by adding the following sentence at the end of the first paragraph: “If a tutorship council is not established within three months of the institution of tutorship, those particulars may be determined by the Public Curator.”

10. Article 246 of the Code is amended by inserting “within 30 days of the anniversary date of the institution of tutorship” at the end of the first paragraph.

11. Article 247 of the Code is amended by replacing “At” by “Within 30 days after”.

12. Article 266 of the Code is amended by replacing “apply, adapted as required,” in the first paragraph by “, adapted as required, except those set out in articles 209.1 and 217, apply”.

13. The Code is amended by inserting the following article after article 266:

“266.1. If a person who applies for the institution or review of protective supervision shows that it is impossible to call five persons to the meeting of relatives, persons connected by marriage or a civil union, or friends, the court may reduce the number of persons to be called.”

14. Article 270 of the Code is amended by replacing the second paragraph by the following paragraph:

“Such a report contains, in particular, the medical and psychosocial assessments prepared by the persons who examined the person of full age; it deals with the nature and degree of the incapacity of the person of full age, the extent of his needs and the other circumstances of his condition, the time limits

for medical and psychosocial reassessments and the advisability of instituting protective supervision for him. It also sets out the names, if known, of the persons qualified to apply for the institution of protective supervision.”

15. Article 278 of the Code is replaced by the following article:

“**278.** A person of full age under protective supervision is reassessed periodically. The time limits for reassessment cannot exceed ten years in the case of a medical assessment and five years in the case of a psychosocial assessment.

Upon the institution of protective supervision, the court determines the applicable time limits for the first reassessments, based on the recommendations made in the medical and psychosocial assessments. Subsequently, the person who makes an assessment specifies the time limit for the next assessment. Notice of the time limit is sent to the person of full age and the person who applied for the assessment, and the latter informs the tutorship council and the Public Curator.

The curator, tutor or adviser to the person of full age is bound to see to it that the person of full age undergoes the assessments within the prescribed time limits.”

16. The Act is amended by inserting the following article after article 278:

“**278.1.** If one of the assessors concludes that the situation of the person of full age has so changed as to justify the termination or modification of protective supervision, the assessor reports as much to the person of full age and the person who applied for the assessment, and the latter shall obtain the second assessment and file a copy of the medical and psychosocial assessments in the office of the court.”

17. Article 279 of the Code is amended

- (1) by inserting “or need for assistance or representation” after “incapacity”;
- (2) by replacing “assessment” by “assessments”.

18. Article 280 of the Code is amended by replacing “and to the Public Curator” by “, his curator, tutor or adviser and the Public Curator”.

19. Article 281 of the Code is amended by inserting “and, if it sees fit, a substitute curator” at the end of the second paragraph.

20. Article 285 of the Code is amended by inserting “and, if it sees fit, a substitute tutor” at the end of the second paragraph.

21. Article 288 of the Code is amended

(1) by replacing “assessment” in the first paragraph by “assessments”;

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

“If the court institutes tutorship to property only, it shall specify which acts the person under tutorship may not perform unless he is represented or assisted by the tutor.”

22. Article 291 of the Code is amended by adding the following sentence at the end: “If it sees fit, the court appoints a substitute adviser.”

23. The heading of Section VI before article 295 of the Code is replaced by the following heading:

“END OF PROTECTIVE SUPERVISION AND SUBSTITUTION OF CURATOR, TUTOR OR ADVISER”.

24. The Code is amended by inserting the following article after article 296:

“296.1. A curator, tutor or adviser may not renounce the office unless a substitute curator, tutor or adviser accepts it in accordance with the second paragraph, or unless the person is relieved of the office by the court.

A substitute curator, tutor or adviser who accepts the office shall file the acceptance in the office of the court. The clerk of the court notifies the person of full age and the persons qualified to intervene in the application for protective supervision of the filing of the acceptance. If no objection is made within 30 days of the filing, the substitution of the curator, tutor or adviser takes effect by operation of law. An attestation is drawn up by the clerk and sent without delay to the person of full age, the curator, tutor or adviser, the curator, tutor or adviser being replaced, the tutorship council and the Public Curator.”

25. Article 297 of the Code is amended

(1) by inserting the following paragraph after the first paragraph:

“Upon being informed of a vacancy, the substitute curator, tutor or adviser may accept the office in accordance with the second paragraph of article 296.1.”;

(2) by replacing “The” in the second paragraph by “Failing that, the”.

26. Article 2166 of the Code is amended by adding the following sentence at the end of the first paragraph: “In no case may such a mandate be made jointly by two or more persons.”

27. The Code is amended by inserting the following articles after article 2166:

“2166.1. A mandate may express the wishes of the mandator with respect to care, including lodging, and his wish to have the mandate homologated even if his incapacity is only partial. However, any wishes expressed with respect to care in advance medical directives prevail over any conflicting wishes set out in a mandate.

Unless the mandator expressly waives a rendering of account during the performance of the mandate, the mandate must identify the person to whom the mandatory is to render an account and specify the intervals at which this is to be done.

“2166.2. The mandatory shall make an inventory of the property to be administered upon homologation of the mandate.

Subject to any provisions regarding the inventory in the mandate, the rules governing administration of the property of others set out in articles 1326 to 1329 apply.”

28. The Code is amended by inserting the following article after article 2167.1:

“2167.2. Every decision relating to the homologation or performance of a mandate must be in the interest of the mandator, respect his rights and safeguard his autonomy.

The mandator shall, so far as possible and without delay, be informed of the decision.”

29. Article 2173 of the Code is amended

(1) by replacing “assessment” in the first paragraph by “assessments”;

(2) by inserting the following paragraph after the first paragraph:

“The mandator or the mandatory may also request medical and psychosocial assessments to assess the capacity of the mandator. If the assessment reports conclude that the mandator has again become capable, the persons who made the assessments shall send a copy of the reports to the mandator and the mandatory and file a copy in the office of the court.”

30. The Code is amended by inserting the following article after article 2174:

“2174.1. The substitute mandatory may, if the mandate is not performed faithfully or for any other serious reason, ask the court to be substituted for the initial mandatory and to order the latter to render an account.”

CODE OF CIVIL PROCEDURE

31. Article 394 of the Code of Civil Procedure (chapter C-25.01) is amended by replacing the first paragraph by the following paragraph:

“All applications relating to tutorship to an absentee, tutorship to a minor, the emancipation of a minor or protective supervision of a person of full age and all applications relating to a protection mandate must be notified to the Public Curator together with the exhibits in support of them. In such cases, the proceeding is stayed until proof of notification is received by the court office.”

PUBLIC CURATOR ACT

32. The Public Curator Act (chapter C-81) is amended by inserting the following section after section 14:

“14.1. The Public Curator may, when acting under section 14, obtain from any notary or lawyer a copy of a protection mandate of which the notary or lawyer is the depositary in order to take into account the wishes expressed in it by the person of full age.”

33. Section 17 of the Act is amended by adding the following paragraph at the end:

“The Public Curator shall encourage the delegation of consent-granting authority with respect to care required by the state of health of a person of full age to a person referred to in article 15 of the Civil Code, unless the Public Curator deems it inadvisable.”

34. Section 20 of the Act is replaced by the following section:

“20. The Public Curator, in performing his duties of supervision over the administration of tutorships and curatorships, shall inform tutors and curators on how to fulfil their obligations.

Tutors and curators shall send the Public Curator, within 60 days of the institution of tutorship or curatorship, a copy of the inventory of the property entrusted to their administration, made in accordance with Title Seven of Book Four of the Civil Code respecting the administration of the property of others; they shall also send an annual report of their administration within 30 days of the anniversary date of the institution of tutorship or curatorship, a copy of the periodic assessment report on the person of full age at the end of each year in which such an assessment must be made, and a copy of the account rendered on the termination of their administration within 30 days of the termination.”

35. The Act is amended by inserting the following section after section 20:

“**20.1.** Despite section 20, the tutor or curator to a person of full age is not required to send an annual administration report to the Public Curator if the value of the property administered is less than \$25,000.”

36. The Act is amended by inserting the following section after section 23:

“**23.1.** The Public Curator’s duties of supervision over the administration of tutorships and curatorships cease, in relation to a tutorship or curatorship, when the minor or person of full age concerned no longer ordinarily resides in Québec.

The same applies to the Public Curator’s duties in his capacity as tutorship council for such a minor or person of full age.”

37. Section 36 of the Act is amended by replacing “\$5,000” by “\$8,000”.

38. Section 44 of the Act is amended by inserting “jointly with the Minister of Finance and” after “established” in the first paragraph.

39. Section 44.1 of the Act is replaced by the following section:

“**44.1.** Despite section 44, the Public Curator may enter into agreements with the Minister of Finance to entrust the management of all or part of the joint portfolios to the Minister or, if necessary in order to obtain or maintain acceptance for registration by the Minister of National Revenue of a retirement savings plan or a retirement income fund under the Income Tax Act (Revised Statutes of Canada, 1985, chapter 1, 5th Supplement), with a financial institution to entrust such management to the institution.

In that case, the management of the portfolios is governed solely by the investment policy established jointly by the Public Curator and the Minister of Finance.”

40. Section 67 of the Act is amended by replacing “30 June” in the first paragraph by “31 October”.

41. The heading of Chapter VII before section 68 of the Act is replaced by the following:

“REGULATIONS AND PILOT PROJECTS

“DIVISION I

“REGULATIONS”.

42. The Act is amended by inserting the following after section 68:

“DIVISION II

“PILOT PROJECTS

“**68.1.** The Minister may conduct a pilot project to assess the advisability of implementing a mechanism for recognizing persons to whom all or part of the functions of tutor or curator to a person of full age would be entrusted, assess their interest in acting in that capacity, and analyze the training rules and supervision that would apply to them.

The implementation of such a mechanism is intended to foster a personal and close relationship between the person of full age and the tutor or curator.

“**68.2.** For the purposes of a pilot project, the Minister may, by regulation, establish the conditions for recognizing persons who may act as tutor or curator to a person of full age and the fees payable to them in that capacity. The Minister may also establish rules relating to the required training, the appropriate conduct and applicable supervision, the requirement to furnish and maintain security to cover any liability that may be incurred by such persons for any fault committed in exercising their functions, and the keeping of a register.

“**68.3.** A pilot project may be implemented in one or more judicial districts.

“**68.4.** The Minister may at any time modify or terminate a pilot project after informing the persons concerned.

“**68.5.** A pilot project has a maximum duration of three years, which the Minister may extend by up to two years if the Minister considers it necessary.”

TRANSITIONAL AND FINAL PROVISIONS

43. A tutor to a person who is party to a proceeding relating to the property of a minor under way on (*insert the date of coming into force of this Act*) continues as a party to the proceeding.

44. A time limit or period that is introduced by a provision of this Act and that begins on the occurrence of an event which took place prior to (*insert the date of coming into force of this Act*) runs only as of that date.

An insurer who, before (*insert the date of coming into force of this Act*), has received the required proof of loss is not subject to the 20-day notice period prescribed by article 217 of the Civil Code, as replaced by section 6, if complying with that notice period would prevent the insurer from complying with the time limit prescribed by article 2436 of that Code. In such a case, the insurer must meet the obligation imposed by article 217 as soon as possible.

45. A protection mandate made before (*insert the date of coming into force of this Act*) may not be invalidated for the sole reason that it was made jointly by two or more persons or that it does not provide for a rendering of account to a third party.

The first paragraph ceases to apply to such a mandate if changes are made to the mandate after the date provided for in that paragraph.

46. For the purposes of the reassessment of a person of full age who is under protective supervision on the date of coming into force of sections 14, 15 and 16, the following time limits continue to apply:

- (1) five years, in the case of a curatorship;
- (2) three years, in the case of a tutorship or the appointment of an adviser;
or
- (3) any shorter time limit fixed by the court.

The person who, at the end of the prescribed period, makes the medical or psychosocial assessment, as the case may be, must, in accordance with article 278 of the Civil Code, specify the time limit for the next assessment and notify the person of full age and the person who requested the assessment, who must in turn inform the tutorship council and the Public Curator.

47. The expression “medical and psychosocial assessment” is replaced, wherever it occurs in the laws and regulations, by the expression “medical and psychosocial assessments”, with the necessary modifications.

48. This Act comes into force on (*insert the date of the first day of the month that is six months after the date of assent to this Act*), except sections 14, 15 and 16, paragraph 2 of section 21 and section 46, which come into force on the date to be set by the Government.

