



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 45

**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
Madam Yolande James
Minister of Families**

**Québec Official Publisher
2012**

EXPLANATORY NOTES

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

It includes amendments to the Civil Code relating to tutorship of a minor. In the case of legal tutorship, it raises the threshold amount for exercising some tutor obligations and, in the case of dative tutorship, it allows the court to grant an exemption from two such obligations below the same threshold amount. It provides that the Public Curator must be given at least 20 days' notice of the transfer 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 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 administration, and establishes the right of a tutor to property to act in judicial proceedings.

Amendments to the Civil Code and the Code of Civil Procedure in relation to the protective supervision of a person of full age are also proposed. The court is authorized to reduce the number of persons called to a meeting of relatives, persons connected by marriage or a civil union and friends, and the rules governing the replacement of a tutor or curator are made more flexible. 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. Cessation of the need for representation is added to the possible reasons for releasing a person from protective supervision, and it is provided that the court must specify the scope of a tutorship to property only. The provisions relating to advisers to persons of full age are repealed and transitional measures are provided for persons who currently have an adviser.

The bill facilitates the establishment of tutorship councils by simplifying the procedure in the case of tutorship to a minor, by replacing the meeting quorum requirement by the call of a minimum number of participants to attend the meeting of relatives, persons

connected by marriage or a civil union and friends and by allowing such meetings to be held using technological means.

In the two codes, the rules governing mandates in anticipation of incapacity, which are renamed protective mandates, are amended. More specifically, what may be provided for in such a mandate is put forward and new requirements are imposed on the mandatary. Also set out are the criteria for the homologation or execution of a protective mandate and the remedies available if the mandatary does not faithfully perform the mandate. In addition, it is provided that the documentation supporting the application for the homologation of a protective mandate must be sent to the Public Curator. A transitional rule is also included to provide that the validity of a protective mandate is to be determined in accordance with the law in force on the day the mandate is made.

The Code of Civil Procedure is further amended to give priority to the family as regards the service of an application for authorization with respect to care.

The Public Curator Act is also amended. The proposed changes terminate the Public Curator's supervisory obligations in relation to persons who no longer reside in Québec, expand information requirements and promote the delegation of consent-granting authority with respect to care to the relatives and friends close to the incapable person. They also provide that in some cases the Public Curator may obtain a copy of a protective mandate from a lawyer or notary. They make it possible for the Minister of Families to implement pilot projects for the delegation to a third party of tutorship or curatorship to persons of full age. Other administrative amendments are made as regards the management of joint portfolios and the filing date for financial statements.

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 (R.S.Q., chapter C-25);
- Public Curator Act (R.S.Q., chapter C-81).

Bill 45

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,” before “apply” 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 “, but the tutor to the person represents the minor in judicial proceedings regarding that property” in 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 and friends” after “council” in the second paragraph.

5. Article 209 of the Code is amended by replacing “\$25,000” by “\$35,000”.

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

“209.1. On the advice of the meeting of relatives, persons connected by marriage or a civil union and friends, the court may exempt a dative tutor from applying for the establishment of a tutorship council and filing an annual administration report if the value of the property to be administered is less than \$35,000.”

7. Article 213 of the Code is amended by replacing “\$25,000” in the first paragraph by “\$35,000”.

8. Article 214 of the Code is amended by replacing “\$25,000” in the first paragraph by “\$35,000”.

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

“217. Where the property is worth more than \$35,000, the liquidator of a succession which devolves or is bequeathed to a minor and the donor of property if the donee is a minor, and, in all cases, any person who pays an indemnity for the benefit of a minor, shall notify the Public Curator, stating the value of the property or the amount of the indemnity, at least 20 days before the property is transferred or the indemnity is paid.

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

10. Article 221 of the Code is amended by replacing “\$25,000” in the second paragraph by “\$35,000”.

11. 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 participants in attendance, regardless of their number.”

12. The Code is amended by inserting the following article after article 227:

“227.1. For the purposes of the meeting, the use of any technological means is permitted which enables the persons entitled to attend the meeting to express themselves and communicate directly with the other persons attending it and which, if the meeting is on court premises, is available within the technological environment in place to support the administration of the courts.”

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

“233.1. If more than one tutor has been appointed for a minor, the tutorship council facilitates the settlement of any disagreement that may arise. If the tutors cannot agree, the court decides.”

14. Article 240 of the Code is amended by adding “, if there is one” at the end of the second paragraph.

15. Article 242 of the Code is amended

(1) by replacing “\$25,000” in the first paragraph by “\$35,000”;

(2) by adding the following sentence at the end of the first paragraph: “If the tutorship council is not established within three months of the institution of tutorship, those specifics may be determined by the Public Curator.”

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

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

18. 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”.

19. 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 proves that it is impossible to call five persons to the meeting of relatives, persons connected by marriage or a civil union and friends, the court may reduce the number of persons to be called.”

20. Article 270 of the Code is amended

(1) by striking out “assisted or” and “assistance or” in the first paragraph;

(2) by replacing “the medical and psychosocial assessment prepared by the person” in the second paragraph by “the medical and psychosocial assessments prepared by the persons”;

(3) by inserting “and the time limits for medical and psychosocial reassessments” after “situation” in the second paragraph.

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

“278. The court determines the applicable time limits for medical and psychosocial reassessments of the person of full age, based on the recommendations contained in the medical and psychosocial assessments. The time limit may vary according to the assessment concerned, without exceeding ten years in the case of a medical assessment or five years in the case of a psychosocial assessment.

The curator or tutor is bound to see to it that the person of full age undergoes medical and psychosocial assessments within the fixed time limits. The person who performs an assessment must specify the time limit for the next assessment. That person must send a copy of the report to the person of full age and to the person who requested the assessment, who forwards a copy to the tutorship council.

Protective supervision cannot be modified or terminated without a medical and psychosocial assessment being made. If the assessment reports conclude that the situation of the person of full age has changed sufficiently so as to justify the termination or modification of protective supervision, the persons

who performed the assessments file a copy of the report in the office of the court.”

22. Article 279 of the Code is amended

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

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

24. Article 281 of the Code is amended by adding “and, if it considers it expedient, a substitute curator” at the end of the second paragraph.

25. Article 285 of the Code is amended by adding “and, if it considers it expedient, a substitute tutor” at the end of the second paragraph.

26. Article 288 of the Code is amended

- (1) by replacing “assessment” in the first paragraph by “assessments”;
- (2) by adding the following paragraph after the second paragraph:

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

27. Section V of Chapter III of Title Four of Book One of the Code, comprising articles 291 to 294, is repealed.

28. The heading of Section VI of Chapter III of Title Four of Book One of the Code is replaced by the following heading:

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

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

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

A substitute curator or tutor 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 or tutor takes effect without other formality. An attestation is drawn up by the clerk and sent without delay

to the person of full age, the curator or tutor, the curator or tutor being replaced, the tutorship council and the Public Curator.”

30. Article 297 of the Code is replaced by the following article:

“**297.** A vacancy in the office of curator or tutor does not terminate protective supervision.

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

Failing that, the tutorship council shall initiate the appointment of a new curator or tutor; any interested person may also initiate such an appointment.”

31. Article 710 of the Code is amended by striking out the second sentence.

32. Article 1815 of the Code is repealed.

33. The heading of Section IV of Chapter IX of Title Two of Book Five of the Code is amended by replacing “MANDATE GIVEN IN ANTICIPATION OF THE MANDATOR’S INCAPACITY” by “PROTECTIVE MANDATE”.

34. Article 2166 of the Code is amended by replacing the first paragraph by the following paragraph:

“**2166.** A protective mandate, given by a person of full age, is a mandate in anticipation of being incapable of taking care of oneself or administering one’s property; it is made by a notarial act en minute or in the presence of witnesses. It cannot be made jointly by two or more persons.”

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

“**2166.1.** A protective mandate may, among other things, express the wishes of the mandator with respect to lodging and care. It may also provide for the possible homologation of the mandate even if the mandator’s incapacity is only partial.

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 must 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.”

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

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

So far as possible, the mandator must be informed of the decision without delay.”

37. 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 for the same purposes. If the assessment reports conclude that the mandator has again become capable, the persons who performed the assessments send a copy of the reports to the mandator and the mandatory and file a copy in the office of the court.”

38. 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 another 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

39. Article 776 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting “the spouse, a close relative or a person who shows a special interest in the person of full age or, failing that, on” after “served on” in the second paragraph.

40. The Code is amended by inserting the following article after article 863.9:

“863.9.1. Despite article 863.9, if the notary receives an application for the establishment of a tutorship council for a minor, the notary’s deposit of an authentic copy of the minutes at the office of the court of the minor’s domicile or residence renders establishment of the council effective.

The notary notifies without delay a copy of the minutes, which bear the deposit date, to the interested persons, including the minor if 14 years of age or over, the tutor, the members of the tutorship council and the Public Curator.”

41. Article 863.10 of the Code is amended by replacing “article 863.11” in the first paragraph by “articles 863.9.1 and 863.11”.

42. The Code is amended by inserting the following article after article 876.2:

“876.3. An application for an exemption from establishing a tutorship council and filing an annual administration report is served on the minor if 14 years of age or over and notified to the Public Curator.”

43. Article 884 of the Code is replaced by the following article:

“884. Protective supervision may be reviewed only if the rules applicable to the institution of protective supervision are observed. The same applies to the replacement of a curator or tutor, although medical and psychosocial assessments are not required.”

44. Article 884.1 of the Code is amended

(1) by replacing “mandate given by a person in anticipation of his inability” in the first paragraph by “protective mandate”;

(2) by replacing “on the Public Curator” in the second paragraph by “, where applicable, on the substitute mandatory, the person designated by the mandator to receive the account as well as the Public Curator”.

45. The Code is amended by inserting the following article after article 884.2:

“884.2.1. The mandate and expert reports in support of the application must be served on the Public Curator. Failing service on the Public Curator, the clerk shall suspend the proceedings until proof of service is received at the office of the court.”

46. Article 884.5 of the Code is replaced by the following article:

“884.5. A mandate may be revoked only if the rules applicable to the homologation of the mandate are observed. The same applies to the substitution of a mandatory, although the medical and psychosocial assessments are not required.”

47. Article 884.7 of the Code is amended

(1) by replacing “mandate given in anticipation of the mandator’s incapacity” in the first paragraph by “protective mandate”;

(2) by replacing “and to the substitute mandatory designated by the mandator” in the second paragraph by “, the substitute mandatory, the person designated by the mandator to receive the account.”.

48. The Code is amended by inserting the following article after article 884.7:

“884.7.1. When an application is made for the recording of the coming into effect of a mandate, the mandate and expert reports in support of the application are notified to the Public Curator. Failing notification to the Public Curator, the clerk shall suspend the proceedings until proof of notification is received at the office of the court.”

PUBLIC CURATOR ACT

49. Section 13 of the Public Curator Act (R.S.Q., chapter C-81) is amended by adding the following paragraph after the first paragraph:

“For the purpose of assessing the advisability of intervening in any proceedings referred to in this section, the Public Curator must receive from the applicant all the documents attached to the application which is served on or notified to him.”

50. The Act is amended by inserting the following section after section 14:

“14.1. The Public Curator may, for the purposes of section 14, obtain from any notary or lawyer a copy of a protective mandate of which the notary or lawyer is the depository.”

51. Section 17 of the Act is amended by adding the following paragraph:

“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.”

52. Section 20 of the Act is amended

(1) by replacing “any tutor or curator who so requires of the manner of fulfilling his obligations” in the first paragraph by “tutors and curators on how to fulfil their obligations”;

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

“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 relating to the administration of the property of others; they shall also send an annual administration report within 30 days of the anniversary date of the institution of tutorship or curatorship, a copy of the periodic assessment report on the incapacity of 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 such termination.”

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

“23.1. The Public Curator’s powers 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 its powers in its capacity as tutorship council for a minor or a person of full age.”

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

55. Section 44 of the Act is amended by replacing “after consultation with the investment committee referred to in section 46” in the first paragraph by “jointly with the Minister of Finance”.

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

“44.1. Despite section 44, the Public Curator may enter into agreements to entrust the management of all or part of the joint portfolios to the Minister of Finance or, if necessary 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), to a financial 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.”

57. Sections 46 to 49 of the Act are repealed.

58. Section 67 of the Act is amended by replacing “June” in the first paragraph by “September”.

59. The heading of Chapter VII of the Act is replaced by the following:

“REGULATIONS AND PILOT PROJECTS

“DIVISION I

“REGULATIONS”.

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

“DIVISION II

“PILOT PROJECTS

“68.1. The Minister may develop a pilot project for the purpose of assessing the advisability of implementing a mechanism for the recognition of

persons with a view to entrusting them with all or some of the duties of tutor or curator to a person of full age, the interest of persons in acting in that capacity and the rules relating to training and supervision that would apply to them.

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 the pilot project, the Minister may in particular establish by order the standards applicable to the recognition of persons acting in the capacity of tutor or curator, the required training, the rules relating to conduct and supervision, the liability guarantees required, the fees paid to the persons in that capacity and the holding of a register.

Such an order is not subject to the publication requirement provided for in section 8 of the Regulations Act (chapter R-18.1).

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

“68.4. The Minister may at any time make changes to or terminate a pilot project after notifying the persons concerned.

“68.5. A pilot project has a maximum duration of three years, which the Minister may renew for up to two years.”

TRANSITIONAL AND FINAL PROVISIONS

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

62. A prescribed 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 9, 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.

63. The validity of a protective mandate is determined in accordance with the law in force on the day the mandate is made.

64. The expression “mandate in anticipation of incapacity” and other expressions to the same effect are replaced, wherever they occur in the laws and regulations, by “protective mandate” with the necessary modifications.

65. For the purpose of reviewing protective supervision underway on (*insert the date of coming into force of paragraph 3 of section 20 and section 21*), the time limit of five years or three years, depending on whether it is tutorship or curatorship, or any shorter time limit fixed by the court, continues to apply. The person who performs the medical or psychosocial assessment, as the case may be, at the end of the prescribed period must specify in the resulting report the time limit for the next assessment and send a copy of the report to the person of full age and the person who requested the assessment. Article 278 of the Civil Code applies to that assessment.

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

67. Despite section 27, supervision of a person of full age by an adviser that is underway on (*insert the date of coming into force of this Act*) continues to be in effect until (*insert the date that occurs one year after the coming into force of this Act*) and the persons supervised in such manner and their advisers are, until that date, subject to the provisions that applied to such supervision before it was abolished by this Act.

During that period, the Public Curator must take reasonable steps to notify persons supervised in such manner and their advisers of the abolition of that form of supervision and inform them of the consequences of the abolition and the measures available according to a person’s situation.

Subject to the application of the first paragraph, the expressions “adviser to a person of full age”, “advisers to persons of full age”, “an adviser to assist” and “person of full age provided with an adviser” and the words “adviser”, “assist”, “assists”, “assisted” and “assistance”, wherever used in the laws and regulations in relation to protective supervision of a person of full age by an adviser, are struck out with the necessary modifications.

68. The expression “to make up for the support owed by” in the English text of article 218 of the Civil Code is replaced by the expression “to make good on the obligation of support that lies on”.

69. This Act comes into force on (*insert the date of the first day of the month that follows the six-month period after the date of assent to this Act*), except paragraph 3 of section 20 and section 21, which come into force on the date to be fixed by the Government.

