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# NATIONAL ASSEMBLY

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SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 50

## **An Act to amend the Civil Code**

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### **Introduction**

**Introduced by  
Mr Paul Bégin  
Minister of Justice**

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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 is given the power, even in the absence of a contrary medical opinion, to refuse to order confinement if it is not satisfied 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.*

*Finally, the bill introduces a five-year limit on the seller's warranty for any hidden defects existing in a residential immovable at the time of the sale.*

*The bill also contains technical and terminological amendments.*

## **LEGISLATION AMENDED BY THIS BILL :**

- Civil Code of Québec ;
- Act respecting Roman Catholic Cemetery Companies (R.S.Q., chapter C-40.1).

# Bill 50

## AN ACT TO AMEND THE CIVIL CODE

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.** The court may only authorize confinement in an institution following a psychiatric assessment if both psychiatric examination reports conclude that confinement is necessary and if the court has serious reasons to believe that the person is dangerous and the person’s confinement is necessary.

Even in the absence of a contrary medical opinion and despite any evidence that may be presented, the court must refuse to order confinement if it is not satisfied that it is necessary.

**“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 extension of confinement beyond the duration set by the judgment ordering confinement must be authorized by the court, in accordance with the provisions of article 30.”

**2.** The English text of article 280 of the said Code is amended by replacing “protective supervision is terminated” in the second sentence by “protective supervision is modified or terminated”.

**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.** On the application of an interested person and if it is satisfied that the measure is necessary to establish filiation, the court may order the analysis of a sample of a bodily substance so that the genetic profile of the persons involved in the action may be established.

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 inference 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 sentence of the first paragraph by the following sentence : “The acquirer of a fraction of divided co-ownership, including a creditor who takes such a fraction in payment, may request from the syndicate a statement of the contribution to common expenses owed by the previous co-owner.”

**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.** Article 1726 of the said Code is amended by adding the following paragraph at the end :

“The seller of a residential immovable, including land intended for residential purposes, is not bound to warrant against any latent defect that appears more than five years after the sale, except if he acted in bad faith.”

**9.** 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.”

**10.** 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”.

**11.** 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.”

**12.** 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”.

**13.** With respect to existing legal situations, the five-year period introduced in article 1726 of the Civil Code by section 8 runs from (*insert here the date of assent to this Act*).

**14.** This Act comes into force on (*insert here the date of assent to this Act*).