



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Draft Bill

**An Act to amend the Civil Code and
other legislative provisions as regards
adoption and parental authority**

**Tabled by
Madam Kathleen Weil
Minister of Justice**

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EXPLANATORY NOTES

This draft bill amends the Civil Code of Québec as regards adoptions and parental authority by introducing new forms of adoption and new provisions relating to responsibility for a child.

The draft bill thus provides for open adoption and for adoption in which the bond of filiation with the original parents is not dissolved. Open adoption allows the adoptive parents and the original parents to make an openness agreement to facilitate the disclosure and exchange of information about the adopted child or to maintain personal relations during the placement or after the adoption. Adoption in which the bond of filiation is not dissolved preserves the child's pre-existing bond of filiation. The act of birth established for the purposes of such an adoption will set out the child's original filiation and adoptive filiation.

The draft bill further provides for the judicial delegation of parental authority to allow the father and mother of a child to share the exercise of parental authority with their respective spouses or to allow the court to transfer the exercise of the rights and duties associated with parental authority and legal tutorship.

The draft bill makes substantial changes regarding the confidentiality of the information contained in adoption files by permitting, for future adoptions, the identity of the original parents and the adopted child to be disclosed and a reunion to be facilitated if the parties do not object.

Lastly, the draft bill makes consequential amendments, in particular to allow the required content of an adoption file and the procedure for registering or cancelling an identity disclosure veto or contact veto to be prescribed under the Youth Protection Act.

LEGISLATION AMENDED BY THIS DRAFT BILL:

- Civil Code of Québec (1991, chapter 64);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Youth Protection Act (R.S.Q., chapter P-34.1);
- Act respecting health services and social services (R.S.Q., chapter S-4.2).

Draft Bill

AN ACT TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE PROVISIONS AS REGARDS ADOPTION AND PARENTAL AUTHORITY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CIVIL CODE OF QUÉBEC

1. Article 33 of the Civil Code of Québec (1991, chapter 64) is amended by adding the following paragraph at the end:

“A disagreement as to the maintenance of personal relations with a child is settled by the court, after fostering conciliation of the parties.”

2. Article 132 of the Code is amended by adding “, including, where the court has granted an adoption without dissolving the pre-existing bond of filiation, those relating to that original filiation” at the end of the first sentence of the third paragraph.

3. Article 545 of the Code is amended by adding the following sentence at the end of the first paragraph: “No child may be adopted by his father’s or mother’s former spouse unless that person stood in loco parentis towards him when he was a minor.”

4. Article 547 of the Code is amended by inserting “or former spouse” after “child of the spouse” in the first paragraph.

5. The Code is amended by inserting the following article after article 547:

“547.1. Consent to adoption is given for an adoption in which the pre-existing bond of filiation between the adopted person and his father and mother is dissolved, for an adoption in which that bond is preserved or for either those forms of adoption.”

6. Article 555 of the Code is amended by inserting “or former spouse” after “in favour of the spouse”.

7. Article 559 of the Code is amended by adding “, unless there has been a judicial delegation of parental authority” at the end of paragraph 2.

8. The heading of Section II of Chapter II of Title Two of Book Two of the Code is amended by striking out “AND ADOPTION JUDGMENT”.

9. Article 566 of the Code is amended

(1) by striking out “nor may the adoption of a child be granted unless the child has lived with the adopter for at least six months since the court order” in the first paragraph;

(2) by striking out the second paragraph.

10. Article 568 of the Code is amended

(1) by striking out “for the purposes of an adoption resulting in the dissolution of the pre-existing bond of filiation between the child and the child’s family of origin” in the first paragraph;

(2) by adding the following sentence at the end of the first paragraph: “In the case of a special consent to adoption, the court may order that a psychosocial assessment of the adopter be made by the director of youth protection.”;

(3) by replacing “Where the placement of a child domiciled outside Québec is made under an agreement entered into by virtue of the Youth Protection Act, the court also verifies” in the second paragraph by “Where the child is domiciled outside Québec, the court ascertains that the consents required have been given for an adoption in which the pre-existing bond of filiation between the child and the child’s family of origin is dissolved. Where the placement is made under an agreement under the Youth Protection Act, the court also verifies”.

11. Article 569 of the Code is amended by replacing “chosen by the adopter” in the first paragraph by “that may be assigned to the child by the court under article 576”.

12. Article 571 of the Code is amended by inserting “prescribed by article 572.1” after “minimum period of placement”.

13. The Code is amended by inserting the following after article 572:

“SECTION II.1

“ADOPTION JUDGMENT

“572.1. The adoption of a minor child may be granted only if the child has lived with the adopter for at least six months since the order of placement. This period may be reduced by up to three months, however, particularly in consideration of the time during which the child lived with the adopter before the order of placement.”

14. Article 573 of the Code is amended by adding the following paragraph at the end:

“The court may decide that the adoption is not to dissolve the pre-existing bond of filiation, in order to preserve the child’s meaningful ties of kinship with his family of origin. This may be decided in such cases as the adoption of an older child, the adoption of a child by the father’s or mother’s spouse or the adoption of a child by an ascendant of the child, a relative of the child in the collateral line to the third degree or the spouse of such an ascendant or relative. The court must first ascertain that the adopter and the child’s original parents understand the effects of such a decision.”

15. Article 576 of the Code is amended by adding the following paragraph at the end:

“However, when the court decides not to dissolve the pre-existing bond of filiation, it assigns to the adopted person a surname composed of his original surname and the adopter’s surname, unless the court decides otherwise in the adopted person’s interest. The surname must consist of not more than two parts, one taken from the adopted person’s original surname and the other from the adopter’s surname.”

16. Article 577 of the Code is replaced by the following article:

“577. Adoption confers on the adopted person a filiation that replaces his original filiation and, subject to any impediments to marriage or a civil union, the adopted person ceases to belong to his family of origin, unless the court has decided not to dissolve the pre-existing bond of filiation.

However, the adoption by a person of his spouse’s or former spouse’s child does not dissolve the bond of filiation between the spouse or former spouse and the child.”

17. Article 579 of the Code is amended by replacing the second paragraph by the following paragraph:

“However, if the court decides not to dissolve the bond of filiation between the adopted person and his father and mother, the adopted person retains the right to obtain support from them, if he is unable to obtain support from the adopters.”

18. Article 581 of the Code is amended by inserting “in which the pre-existing bond of filiation between the child and the child’s family of origin is dissolved” after “adoption judgment” in the first and second paragraphs.

19. The Code is amended by inserting the following after article 581:

“SECTION III.1

“OPENNESS AGREEMENT

“**581.1.** The father and mother, the tutor or the person having parental authority and the adopter may make an openness agreement regarding the disclosure or exchange of information concerning the adopted person and the maintenance of personal relations between themselves and with the adopted person during the placement or after the adoption.

If the adopted person is a child fourteen years of age or over, he must consent to the agreement. If the adopted person is a child under fourteen years of age of sufficient maturity and discernment, his opinion must be taken into consideration.

“**581.2.** When granting the order of placement or adoption, the court may confirm the agreement as a judgment, at the parties’ request. The court may subsequently amend or revoke an agreement so confirmed. The amendment or revocation of the agreement has no effect on the consents to adoption or on the order of placement or adoption judgment.

“**581.3.** If there is a disagreement as to the application of an agreement confirmed by the court, the parties may have recourse to a dispute settlement procedure or refer the matter to the court.”

20. The Code is amended by inserting the following articles after article 582:

“**582.1.** An adopted person of full age, an adopted minor fourteen years of age or over or, with the adoptive parents’ prior consent, an adopted minor under fourteen years of age has a right to information allowing him to identify or find his original parents, unless they have registered an identity disclosure veto or a contact veto.

The original parents have a right to information allowing them to identify or find their child of full age, unless the child, informed of his adopted status, registered an identity disclosure veto or a contact veto.

“**582.2.** A veto is a right that may not be exercised by a third person.

A veto may be registered or cancelled at any time according to the procedure prescribed under the Youth Protection Act.

The veto subsists for two years after the death of the person who registered it, unless it includes a statement of the person’s wish that the veto be extended, with reasons. The court may deny the extension if it considers the reasons insufficient. The court must in such cases determine how information may be disclosed, and specify whether it authorizes communication with the family of the deceased.”

21. Article 583 of the Code is amended by inserting the following paragraph before the first paragraph:

“583. The disclosure of information is governed by this article where the adoption was granted before (*insert the date of coming into force of this article*) or where, in the case of a person who was not adopted and his original parents, the consents to adoption were given or the declaration of eligibility for adoption was made before that date.”

22. Article 584 of the Code is amended

(1) by striking out “serious” in the first and second paragraphs;

(2) by replacing “allow the adopted person to obtain such information” at the end of the first paragraph by “, even if a veto has been registered, allow the information to be disclosed confidentially to the medical authorities concerned”.

23. The Code is amended by inserting the following article after article 584:

“584.1. A person whose contact veto has not been complied with may claim damages from the original parent or adopted person who obtained information concerning the person.

Such a person may also apply for punitive damages against the original parent or adopted person.”

24. Article 600 of the Code is amended by adding the following paragraph at the end:

“With the authorization of the court and the consent of the other parent, unless that other parent is deprived of parental authority or is unable to express his or her will, the father or mother may share the exercise of parental authority with his or her spouse, except the right to consent to adoption. Such sharing of the exercise of parental authority is terminated by decision of the court.”

25. The Code is amended by inserting the following article after article 600:

“600.1. With the authorization of the court and the consent of the other parent, unless that other parent is deprived of parental authority or is unable to express his or her will, the father or mother may delegate the exercise of all rights and duties associated with parental authority and legal tutorship to his or her spouse, an ascendant of the child, a relative of the child in the collateral line to the third degree or the spouse of such an ascendant or relative. Any of the latter may also apply to the court to receive the delegation of the exercise of those rights and duties despite the absence of the father’s or mother’s consent.

The father's or mother's right to consent to adoption and duty to provide support may not, however, be delegated. The delegation deprives the delegator of the exercise of all other rights and duties related to parental authority and legal tutorship. The court may specify the terms of the delegation.

The delegation is terminated by decision of the court, on the application of any interested person."

26. Article 603 of the Code is amended by adding the following sentence at the end: "In the same circumstances, the person authorized by the court to exercise rights and duties related to parental authority and legal tutorship is presumed to be acting with the consent of the father and mother."

CODE OF CIVIL PROCEDURE

27. Article 823.1 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting ", except in the case of an application for an adoption in which the original bond of filiation is not dissolved" after "vice versa" in the first sentence.

28. Article 823.2 of the Code is amended by adding ", except in the case of an application for an adoption in which the original bond of filiation is not dissolved" at the end.

YOUTH PROTECTION ACT

29. Section 71 of the Youth Protection Act (R.S.Q., chapter P-34.1) is amended by adding the following paragraphs at the end:

"In addition, the director shall inform persons whose consent to adoption is required and adopters of their right to make an openness agreement under article 581.1 of the Civil Code and of the content and effects of such an agreement, and shall encourage them to seek legal advice if necessary.

The director shall also inform them of the legal effects of an adoption in which the bond of filiation is dissolved or, if applicable, of an adoption in which the bond of filiation is preserved."

30. The Act is amended by inserting the following sections after section 71.3:

"71.3.1. A child's adoption file must contain all the information and documents required by regulation, including all information and documents relating to the registration or cancellation of a veto on the disclosure of the child's identity or the identity of the child's original parents, or the registration or cancellation of a contact veto.

A veto must be registered or cancelled in the manner prescribed by regulation.

“71.3.2. It is up to the adoptive parents to inform their adopted child that he or she was adopted and may register an identity disclosure veto or a contact veto. The director may so inform an adopted person of full age after receiving a request concerning that person, or a person 14 years of age or over who has requested confirmation that he or she is adopted.

When a request is made by an adopted minor, the director must inform the adoptive parents.

After the death of an adopted person of full age, the director must inform the adoptive parents that the identity of the deceased has been disclosed to the original parents.

This section does not apply in respect of adoptions granted before (*insert the date of coming into force of this section*).

“71.3.3. The director may, for the purposes of research into family and medical antecedents and for the purposes of reunions between adopted persons and their original parents,

(1) have access to adoption-related judicial and administrative files, including the adoption notices kept by the Minister of Health and Social Services; and

(2) obtain from public bodies the information required to locate the persons concerned.”

31. Section 132 of the Act is amended by inserting the following subparagraph after subparagraph *e* of the first paragraph:

“(e.1) to determine the information and documents that an adoption file must contain and the procedure for registering or cancelling a veto;”.

32. The Act is amended by inserting the following section after section 135.0.1:

“135.0.2. An original parent or an adopted person who disregards a contact veto registered in accordance with section 71.3.1 commits an offence and is liable to a fine of \$3,000 to \$50,000.”

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

33. Section 82 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is amended by replacing “services for child placement, family mediation, expertise at the Superior Court on child custody, adoption and biological history” at the end of the first paragraph by “child placement and family mediation services, expert testimony on child custody for the Superior Court, adoption services, research into family and medical antecedents and reunion services”.

