



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 443

**An Act to amend the Code of Civil
Procedure and other legislative
provisions in relation to notarial matters**

Introduction

**Introduced by
Mr Serge Ménard
Minister of Justice**

**Québec Official Publisher
1998**

EXPLANATORY NOTES

This bill amends the Code of Civil Procedure to allow certain applications relating to tutorship to a minor, protective supervision of a person of full age, a mandate given in anticipation of the mandator's incapacity and the probate of a will to be presented to a notary. The process proposed by the bill is to include all of the evidence presently required by law, in particular as regards the notification of interested persons, required examinations and medical and psychosocial assessments.

In addition, the bill requires a notary to whom an application has been presented to deposit without delay at the office of the court of the domicile or residence of the minor or the person of full age who is incapable of consent an authentic copy of the minutes of the notarial operations, accompanied with all supporting documents. If there is no opposition within ten days of the deposit, the judge or the clerk may homologate the minutes of the notary, provided all the conditions prescribed by law are satisfied.

Under the bill, the judge or the clerk may, even where there is no opposition, refuse to homologate the conclusions set out in the minutes of the notary, or make the orders necessary to protect the rights of the parties for the period and on the conditions determined by the judge or clerk.

The bill provides that minutes of the probate of a holograph will or a will made in the presence of witnesses are deposited solely for publication purposes and do not require homologation.

Lastly, the Civil Code is amended to allow a father or mother to appoint a tutor for his or her child by way of a mandate given in anticipation of the mandator's incapacity, and to provide that tutorship is conferred by the tutorship council or by the court on the advice of the tutorship council. The bill provides that the designation or replacement of the liquidator of a succession is published in the register of personal and movable real rights and, where applicable, in the land register.

LEGISLATION AMENDED BY THIS BILL :

- Civil Code of Québec (1991, chapter 64);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Notarial Act (R.S.Q., chapter N-2).

Bill 443

AN ACT TO AMEND THE CODE OF CIVIL PROCEDURE AND OTHER LEGISLATIVE PROVISIONS IN RELATION TO NOTARIAL MATTERS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. The Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the heading of Chapter I of Book VI by the following :

“CHAPTER I

“GENERAL PROVISIONS

“DIVISION I

“RULES APPLICABLE BEFORE THE COURT”.

2. The said Code is amended by adding, after article 863.3, the following :

“DIVISION II

“RULES APPLICABLE BEFORE THE NOTARY

“**863.4.** An application relating to a tutorship council, to the appointment or replacement of a tutor to a minor, to the institution or review of protective supervision, to a mandate given in anticipation of the mandator’s incapacity, to the probate of a will or to letters of verification may also be presented to a notary in accordance with the special rules contained in this Book.

“**863.5.** The notary must give notice to the interested persons of the time and place at which the notarial operations will begin; the notary must ensure that all interested persons are notified of the application and are given the opportunity to make all relevant observations or representations and that all evidence necessary for the making of the required decisions is presented.

The notary must, in all circumstances, act in the interest of the person concerned by the application.

“**863.6.** Minutes that identify the interested persons, including the person who presented the application, and that set out the facts on which the application is based are drawn up by the notary; the minutes contain a complete and detailed report of the notarial operations and of the notary’s conclusions, in particular concerning the testimony that the notary is required to take and the deliberations of the tutorship council or of the meeting of relatives, persons connected by marriage or friends.

“863.7. Where observations or representations made constitute actual contestation of the merits of the application examined by a notary, the notary must relinquish the matter and inform the interested persons; in such a case, the notary draws up the minutes of the operations that have taken place and transfers the matter to the competent court, which is seized of the matter upon the deposit of the notary’s minutes.

The court may, if it considers it expedient, assign to the notary the mission of taking all evidence necessary for the pursuit of the matter, and fix the time within which the notary must report on the notarial operations to enable the court to make its own assessment of the facts.

“863.8. In matters pertaining to the tutorship to a minor, the protective supervision of a person of full age, a mandate given in anticipation of the mandator’s incapacity or the probate of a will, the notary must deposit without delay at the office of the court of the domicile or residence of the minor or the incapable person of full age an authentic copy of the minutes, accompanied with all supporting documents.

The notary must notify a copy of the minutes to the interested persons, including, according to the case, the minor if the minor is 14 years of age or over or the person of full age, the tutor or curator, the mandator, the mandatary and the Public Curator; the minutes must be accompanied with a notice of at least 10 days of the date of deposit of the minutes at the office of the court.

“863.9. The deposit of the minutes of the notary stands in lieu of a motion for homologation. If there is no opposition within 10 days of the deposit, the judge or the clerk may accept the conclusions set out in the minutes of the notary without further delay, provided all the conditions prescribed by law are satisfied.

Even where there is no opposition, the judge or the clerk may reject the conclusions set out in the minutes of the notary, or make all orders necessary to protect the rights of the parties for the period and on the conditions determined by the judge or clerk.

“863.10. Notice of every order or judgment relating to the homologation of the minutes of the notary is given without delay by the clerk to the interested persons.

“863.11. The decisions of the clerk may be reviewed by the judge on an application served within 10 days. A judgment ordering the homologation is a final judgment that may be appealed from in accordance with article 26.

“863.12. The minutes of the probate of a holograph will or a will made in the presence of witnesses are deposited solely for publication purposes and do not require homologation.”

3. Article 866 of the said Code is amended by inserting “or, in the case of minutes drawn up pursuant to a procedure under this Book, to any person who establishes an interest,” after “representatives” in the first sentence.

4. Article 872 of the said Code is amended by replacing “and” in the second line by “may be presented to the judge or clerk or to a notary ;”.

5. The said Code is amended by inserting, after article 876.1, the following :

“CHAPTER VI.1

“TUTORSHIP TO MINORS

“876.2. Where an application relating to the appointment or replacement of a tutor, a tutor *ad hoc* or a tutor to property is presented to a notary, the notary must notify the minor of the application, if the minor is 14 years of age or over, and the persons mentioned in the first paragraph of article 226 of the Civil Code, and call the latter persons to a meeting of relatives, persons connected by marriage or friends to establish tutorship to the minor and form the tutorship council. If the tutor is being replaced, the notary must also notify the Public Curator.”

6. The said Code is amended by inserting, after article 877, the following :

“877.0.1. Where an application for the institution or review of protective supervision of a person of full age is presented to a notary, the notary must prepare a declaration stating the facts on which the application for the institution or review of protective supervision of a person of full age is based, and must notify the declaration to the person of full age, to a reasonable member of the person’s family, to the Public Curator and to one of the persons mentioned in article 15 of the Civil Code; the declaration must be accompanied with a notice of a meeting of relatives, persons connected by marriage or friends.”

7. Article 878 of the said Code is amended

(1) by replacing “or clerk” in the second line of the first paragraph by “, clerk or notary”;

(2) by moving the second sentence of the first paragraph to the beginning of the second paragraph and by adding, at the end, the following: “If no examination took place, the judgment mentions that fact and indicates the reason why the person was not examined.”;

(3) by inserting, after the second paragraph, the following :

“Where the application is presented to a notary, the notary may not delegate the examination to another notary except to avoid expense of travel arising from the distance at which the person of full age is residing. In all cases, the notary draws up the minutes of the examination of the person of full age or the reasons why the person was not examined.”

8. Article 878.1 of the said Code is amended by adding the following :

“Upon ascertaining the necessity of providing representation to the incapable person of full age, the notary must relinquish the application and transfer the matter to the competent court, which is seized of the matter upon the deposit of the notary’s minutes.”

9. Article 878.2 of the said Code is amended

(1) by inserting “presented to the court” after “supervision”;

(2) by adding the following paragraph :

“When instituting or reviewing protective supervision, the notary must report on the medical and psychosocial assessment, the examination of the person of full age and the other relevant documents to the meeting of relatives, persons connected by marriage or friends.”

10. Article 880 of the said Code is amended by inserting the words “by the notary to whom the application is presented or” after the words “are called” in the second line.

11. The said Code is amended by inserting, after article 884.6, the following :

“884.7. An application for the recording of the coming into effect of a mandate given in anticipation of the mandator’s incapacity or of the declaration of the cessation of the effects or the revocation of such a mandate may also be presented to a notary.

In such a case, the notary notifies the application to the mandator, the mandatory, to the substitute mandatory designated by the mandator and the Public Curator, where applicable, and to one of the persons mentioned in article 15 of the Civil Code.

“884.8. The notary must obtain a medical and psychosocial assessment ascertaining the mandator’s incapacity and the original or an authentic copy of the mandate. Where the mandate was given before witnesses, the existence and validity of the mandate are verified by the notary.

In all cases, the notary must, in accordance with article 878, examine the mandator and determine whether the mandator is capable or incapable of taking care of himself or herself or of administering his or her property. The examination is recorded in writing or in any other manner and attached to the minutes.”

12. Article 885 of the said Code is amended by replacing “of Québec” in the second line by “or in this Book”.

13. The said Code is amended by inserting, after article 887, the following :

“887.1. Where a holograph will or a will made in the presence of witnesses is probated by a notary, on the application of any interested person, the notary notifies to the known heirs and successors a notice of probate to which a copy of the will is attached. Any observations or representations which those persons wish to make must be made, orally or by any other means of communication, within 10 days after notification of the notice of probate.”

14. Article 888 of the said Code is amended by adding the following :

“Where an application is presented to a notary, the clerk may exempt the notary from notifying all of the known successors if it would be impractical or too onerous to call all of them to the probate of the will, and may determine the persons who will be notified.”

15. Article 889 of the said Code is replaced by the following :

“889. The original of the will is examined by the clerk or by the notary. If the will is deposited with a notary, the clerk may order the notary to file the will at the office of the court or to deliver it to the notary designated by the clerk. However, a will deposited with a notary may not be probated by that notary or by a member of that notary’s firm of notaries.”

16. Article 890 of the said Code is amended by adding the following :

“The will probated by a notary together with the minutes of the probate are kept in the records of the notary ; the latter must issue certified copies of the will and of the minutes of the probate to any interested person who so requests.

The notary is also required to file a certified copy of the will and minutes at the office of the court of the district in which the testator was domiciled or, if the testator was not domiciled in Québec, at the office of the court of the district in which the testator died or in which the testator left any property.”

17. Article 892 of the said Code is amended by inserting “or from a notary” after “domicile”.

18. Article 894 of the said Code is amended by adding the following :

“Where an application is presented to a notary, the notary notifies the liquidator of the succession, if that person is known, and all of the known heirs or legatees by particular title residing in Québec.”

19. Article 896 of the said Code is amended by replacing the second sentence of the first paragraph by the following: “The notary is also required to issue certified copies to any person who so requests. However, if the letters of verification are contested, no copy may be issued before the application is disposed of.”

20. Article 200 of the Civil Code of Québec (1991, chapter 64) is amended by inserting the words “, by a mandate given in anticipation of the mandator’s incapacity” after the word “will” in the second line.

21. Article 201 of the said Code is amended

(1) by replacing the words “if he” in the first paragraph by the words “or to the last parent who is able to exercise tutorship, as the case may be, if that parent”;

(2) by inserting the words “or lose the ability to exercise tutorship during the same event” after the word “simultaneously” in the second paragraph.

22. Article 202 of the said Code is amended by striking out the words “, after the death of the last surviving parent” at the end of the first paragraph.

23. Article 205 of the said Code is amended

(1) by replacing “Tutorship is conferred by the court” in the first paragraph by “Tutorship is conferred either by the tutorship council or by the court, on the advice of the tutorship council,”;

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

“If tutorship is applied for by the director of youth protection, tutorship is conferred by the court without the advice of the tutorship council being required.”

24. Article 235 of the said Code is amended by replacing “causes a tutor *ad hoc* to be appointed to him” by “must appoint or cause to be appointed a tutor *ad hoc*”.

25. Article 266 of the said Code is amended by replacing the words “tutorship council” in the second line of the second paragraph by the words “meeting of relatives, persons connected by marriage or friends”.

26. Article 777 of the said Code is amended by adding the following:

“The designation or replacement of the liquidator of the succession is published in the register of personal and movable real rights and, where applicable, in the land register.”

27. Section 31 of the Notarial Act (R.S.Q., chapter N-2) is amended by striking out subsection 1.

28. The provisions of this Act come into force on the date or dates to be fixed by the Government.