



NATIONAL ASSEMBLY

FIFTH SESSION

THIRTY-SECOND LEGISLATURE

Bill 12

**An Act to amend the Civil Code,
the Code of Civil Procedure
and other legislation**

Introduction

**Introduced by
Mr Pierre Marc Johnson
Minister of Justice**



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EXPLANATORY NOTES

This bill makes amendments to the Civil Code which allow the Minister of Justice to fix a time, during the office hours of a registry office, for the presentation of documents for registration. They also provide that documents presented outside the fixed time will be registered at the beginning of the next such time.

This bill makes technical amendments to the Code of Civil Procedure regarding the summons of witnesses and the judicial sale of movable property. It also makes various amendments regarding the recovery of small claims. One such amendment allows a creditor to prepare his own motion. A second makes it possible to sue a debtor who is not a Québec resident in the small claims division, if he has a place of business in Québec. By another amendment, the small claims division is given jurisdiction in the matter of dissolution, rescission or cancellation of contracts.

The Registry Office Act is also amended by this bill. New modes of replacement or reconstitution of the books kept by the registrars are introduced, and the related procedure is simplified. The requirements for obtaining a permit under the Act respecting explosives are made more flexible. The Juror's Act is amended to give fuller protection from reprisals to employees who miss work because of jury duty. Similar protection is given witnesses under the Courts of Justice Act.

Finally, the bill makes a number of technical amendments to various Acts in view of facilitating the administration of justice.

ACTS AMENDED BY THIS BILL

- Civil Code;
- Registry Office Act (R.S.Q., chapter B-9);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Labour Code (R.S.Q., chapter C-27);
- Act respecting explosives (R.S.Q., chapter E-22);

- Interpretation Act (R.S.Q., chapter I-16);
- Jurors Act (R.S.Q., chapter J-2);
- Police Act (R.S.Q., chapter P-13);
- Act respecting probation and houses of detention (R.S.Q., chapter P-26);
- Act respecting the class action (R.S.Q., chapter R-2.1);
- Courts of Justice Act (R.S.Q., chapter T-16);
- Act to amend the Civil Code and other legislation respecting adoption (1983, chapter 50).

Bill 12

An Act to amend the Civil Code, the Code of Civil Procedure and other legislation

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CIVIL CODE

1. Article 17 of the Civil Code of Lower Canada, amended by section 1 of chapter 38 of the statutes of 1893, by section 1 of chapter 50 of the statutes of 1897, by section 3 of chapter 12 of the statutes of 1902, by section 1 of chapter 74 of the statutes of 1934, by section 1 of chapter 67 of the statutes of 1945, by section 2 of chapter 19 of the statutes of 1947, by section 1 of chapter 80 of the statutes of 1967, by section 10 of chapter 5 of the statutes of 1978 and by section 35 of chapter 37 of the statutes of 1979, is again amended by inserting, after subparagraph *g* of paragraph 14, the following subparagraph:

“(g.1) the second Monday of October;”.

2. The said Code is amended by inserting, after article 2160, the following article:

“**2160.1** The Minister of Justice may, by order, fix a time during office hours for the presentation of documents for registration or deposit.

A document may be presented outside the fixed time, but it is then deemed to be presented at the beginning of the next time for presentation.”

3. Article 2179 of the said Code, amended by section 1 of chapter 25 of the statutes of 1875 and by section 19 of chapter 71 of the statutes of 1947, is again amended by replacing the first paragraph of the French text by the following paragraph:

“2179. Il est aussi tenu de communiquer le livre de présentation à tous ceux qui désirent l’examiner, sans déplacement, pendant les heures d’ouverture du bureau, et sans frais.”

CODE OF CIVIL PROCEDURE

4. Article 6 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting, after paragraph *g*, the following paragraph:

“(g.1) The second Monday of October;”.

5. Article 280 of the said Code is amended by replacing the first paragraph by the following paragraph:

“280. The party who wishes a witness to testify may summon him by a writ of *subpoena* issued by a judge, prothonotary or advocate of the district where the case is to be heard or any other district and served at least five clear days before the appearance. However, the writ intended for a minister or a deputy minister of the Government is served at least ten clear days before the appearance.”

6. Article 610 of the said Code is amended by replacing the first paragraph by the following paragraph:

“610. The article seized is adjudged to the highest bidder, subject to payment in cash or by certified check payable to the order of the officer conducting the sale, or both; in default of payment it is immediately put up again for sale.”

7. Article 953 of the said Code is amended

(1) by replacing subparagraph *c* by the following subparagraph:

“(c) one exigible from a debtor residing or having a place of business in Québec;”;

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

“The same applies to any motion for the dissolution, rescission or cancellation of a contract where the value of the contract and, as the case may be, the amount claimed do not exceed \$1 000 each.”

8. Article 957 of the said Code is replaced by the following article:

“957. For the purposes of this book, the competent court is that of the domicile of the debtor, or of his residence or place of business if he is not domiciled in Québec, or that of the place where the cause of action arises.”

9. The said Code is amended by inserting, after article 958, the following article:

“958.1 The creditor, either personally or through his mandatary, may also submit, on the form prescribed for that purpose, a motion containing the name, occupation and domicile of each party, or, if the debtor is not domiciled in Québec, his residence or place of business, together with the amount claimed and the cause of the claim. The motion is signed by the creditor or his mandatary and must be supported by an affidavit attesting the truth of the facts and the exigibility of the debt.

The original of the motion is filed in or sent by registered or certified mail to the office of the court.

10. Article 959 of the said Code is amended by replacing the word “declare” in the first line of the second paragraph by the words “inform the creditor or his mandatary”.

11. Article 960 of the said Code is amended by replacing the first paragraph by the following paragraph:

“960. If the institution of the suit is accepted and the creditor has not prepared his motion, the clerk shall prepare it in accordance with article 958.1.”

12. Article 960.1 of the said Code is replaced by the following article:

“960.1 If the distance between the domicile of the creditor and that of the debtor or, if the debtor is not domiciled in Québec, his residence or, failing that, his place of business, is greater than 80 kilometres, the creditor may address the clerk of the court of his domicile for the purposes of articles 958 to 960.

The clerk then sends the original of the motion and the affidavit to the clerk of the court of the domicile of the debtor or, if the debtor is not domiciled in Québec, his residence or, failing that, his place of business.

The decision of the clerk or of the judge of the domicile of the creditor, respecting the acceptance of the institution of the suit, cannot be revised.

The case is heard before the court of the domicile of the debtor or, if the debtor is not domiciled in Québec, his residence or, failing that, his place of business, unless the judge orders otherwise.”

13. Article 989 of the said Code is amended

(1) by inserting after the word “clerk” in the second line of the first paragraph the words “or send with his motion”;

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

“If the clerk refuses to accept the institution of the suit, the sum sent or deposited with the motion is reimbursed to the creditor.”

14. Article 993 of the said Code is amended by striking out paragraph 3.

REGISTRY OFFICE ACT

15. Section 22 of the Registry Office Act (R.S.Q., chapter B-9) is amended by replacing subsections 1, 2 and 3 by the following subsections:

“22. (1) The Minister of Justice may, by order, require a registrar to replace or reconstitute the whole or part of any document kept by the registrar, so as to ensure the conservation of the rights registered in the document and make it easier to consult it.

The replacement or reconstitution may be effected by transcription, photocopy, microfilm or any other means that will ensure the conservation of the information in the document and make it easier to consult it.

The Minister shall determine, in the order, the means to be used to replace or reconstitute the document and the manner of proceeding with such replacement or reconstitution so as to ensure its authenticity.

(2) Where a document is replaced, the registrar shall collate the reproduction with the original and certify in writing and under his oath of office that it is a true reproduction of the original.

Where a document is reconstituted, the registrar shall certify in writing and under his oath of office that it has been reconstituted in accordance with the order of the Minister.

(3) Any reproduction so certified has the same authenticity, validity and effect as the document it replaces or of which it is a reconstitution and the provisions of the Civil Code respecting the organization of registry offices apply.”

16. Section 22.1 of the said Act is replaced by the following section:

“22.1 Where a document has been replaced or reconstituted by means of a microfilm, the Minister of Justice shall determine, by order, the means and manner of making entries related to inscriptions showing on the microfilm.”

LABOUR CODE

17. Section 151.1 of the Labour Code (R.S.Q., chapter C-27) is amended by inserting, after paragraph *g*, the following paragraph:

“(g.1) the second Monday of October;”.

ACT RESPECTING EXPLOSIVES

18. Section 13 of the Act respecting explosives (R.S.Q., chapter E-22) is replaced by the following sections:

“**13.** Any member of the Sûreté du Québec to whom an application for a permit is made must refuse to issue a permit to any applicant who, within the five years preceding the date of the application, has been convicted of or has pleaded guilty to:

(a) an indictable offence under Part II or articles 176, 202 to 223, 228 to 232, 302 to 309 or 387 to 399 of the Criminal Code (Statutes of Canada); or

(b) an indictable offence under Part XI of the Criminal Code (Statutes of Canada) to the extent that it is a conspiracy to commit an indictable offence contemplated in paragraph *a*.

“**13.1** Any member of the Sûreté du Québec to whom an application for a permit is made may, taking particular account of the public interest and public safety, refuse to issue a permit to any applicant who, within five years preceding the date of the application, has been convicted of or has pleaded guilty to:

(a) an offence against this Act or the regulations;

(b) an offence against the Explosives Act (Statutes of Canada) or the regulations made under such Act.”

19. Section 14 of the said Act is amended by adding, after the figure “13” in the first line, the word and figure “or 13.1”.

INTERPRETATION ACT

20. Section 61 of the Interpretation Act (R.S.Q., chapter I-16) is amended by inserting, after subparagraph *g* of paragraph 23, the following subparagraph:

“(g.1) The second Monday of October;”.

JURORS ACT

21. Section 47 of the Jurors Act (R.S.Q., chapter J-2) is replaced by the following section:

“**47.** In no case may an employer or his agent dismiss, suspend or transfer an employee, practise discrimination or take reprisals against him or impose any other sanction upon him on the ground that the latter is summoned or has acted as a juror.

Any contravention of this section, in addition to being an offence against this Act, authorizes an employee to avail himself of his rights before a labour commissioner appointed under the Labour Code (R.S.Q., chapter C-27) in the same manner as if it were a case of dismissal, suspension or transfer of an employee, of the practice of discrimination or the taking of reprisals against him or the imposition of any other sanction upon him by reason of the exercise by the employee of a right arising from the Labour Code. Sections 15 to 20, 118 to 137, 139, 139.1, 140, 146.1 and sections 150 to 152 of the Labour Code then apply, adapted as required."

POLICE ACT

22. Section 4 of the Police Act (R.S.Q., chapter P-13) is amended by inserting, after the word "oaths" in the second line, the words "or make the solemn affirmations".

23. Section 9 of the said Act is amended by replacing the fourth paragraph by the following paragraph:

"In the case of inability to act of the president, he shall be replaced by the vice-president designated by the Attorney General; when another member is unable to act by reason of absence or illness, he may be replaced by a person appointed to perform his duties, while his inability lasts, by the Government, which shall fix his fees."

24. Section 14 of the said Act is amended by inserting, after the word "president" in the third line, the words ", one of the vice-presidents".

25. Section 48 of the said Act is replaced by the following section:

"48. The Director General, the Deputy Directors General and the other members of the Police Force shall take the oaths or make the solemn affirmations provided in Schedules A and B before the following persons:

(1) the Director General, before a judge of the Court of the Sessions of the Peace or a judge of the Provincial Court;

(2) the Deputy Directors General, before the Director General;

(3) the other members of the Police Force, before the Director General or one of the Deputy Directors General."

26. Section 69 of the said Act is amended by inserting, after the word "oaths" in the first line, the words "or make the solemn affirmations".

27. Sections 83 and 84 of the said Act are replaced by the following sections:

“83. Every special constable appointed under section 80 shall take the oaths or make the solemn affirmations prescribed in section 4 before the judge who appoints him.

Every special constable appointed by the mayor of a municipality shall take such oaths or make such solemn affirmations before him or before the clerk or secretary-treasurer of the municipality.

A writing attesting that the special constable has complied with this section shall be drawn up at once in duplicate and one of the duplicates shall be given to the special constable.

“84. When a judge appoints a special constable under section 80, the prothonotary or clerk of the court to which the judge belongs shall send without delay to the Attorney General a copy of the writing attesting the appointment of the special constable and a copy of the writing attesting that the special constable has complied with section 83.”

28. Section 85 of the said Act is amended by replacing the second paragraph by the following paragraph:

“He shall also send forthwith to the Attorney General a copy of the writing attesting the appointment of such special constables and a copy of the writing attesting that those special constables have complied with section 83.”

29. Schedules A and B to this Act are replaced by the following schedules:

“SCHEDULE A

(Section 4)

Oath or solemn affirmation of allegiance and office

I, A. B., (*swear or solemnly affirm, as the case may be*) that I will be loyal and bear true allegiance to constituted authority, and that I will fulfill the duties of my office of....., honestly and justly (*in the case of a member of the Police Force or a municipal policeman, add the following:*) and that I will not receive any sum of money or consideration for what I have done or may do in the discharge of the duties of my office, to procure the purchase or exchange of anything whatsoever by or with (*the Government or the municipality, as the case may be*), other than my salary or what may be allowed me by law or by (*an order of the Government or a by-law or resolution of the council, as the case may be*). (*If taking an oath, add: “So help me God.”*)

“SCHEDULE B

(Section 4)

Oath or solemn affirmation of secrecy

I, A. B., further (*swear or solemnly affirm, as the case may be*) that I will not reveal or disclose, unless duly authorized, anything that may come to my knowledge in the discharge of my duties. (*If taking an oath, add: “So help me God.”*).

ACT RESPECTING PROBATION AND HOUSES OF DETENTION

30. Section 19.3 of the Act respecting probation and houses of detention (R.S.Q., chapter P-26) is amended by adding, at the end, the following paragraph:

“The Minister may, on such conditions as he may determine, guarantee, out of the consolidated revenue fund or otherwise, the payment in capital and interest of any loan or assume the cost of any other obligation contracted by the fund for the benefit of detained persons.”

ACT RESPECTING THE CLASS ACTION

31. Section 7 of the Act respecting the class action (R.S.Q., chapter R-2.1) is replaced by the following section:

“**7.** The object of the Fonds is to ensure the financing of class actions in the manner provided for by this title and to disseminate information respecting the exercise of such actions.”

COURTS OF JUSTICE ACT

32. The Courts of Justice Act (R.S.Q., chapter T-16) is amended by inserting, after section 5.1, the following section:

“**5.2** In no case may an employer or his agent dismiss, suspend or transfer an employee, practise discrimination or take reprisals against him, or impose any other sanction upon him on the ground that the latter is summoned or has acted as a witness.

Any contravention of this section, in addition to being an offence against this Act, authorizes an employee to avail himself of his rights before a labour commissioner appointed under the Labour Code (R.S.Q., chapter C-27), in the same manner as if it were a case of dismissal, suspension or transfer of an employee, of the practice of discrimination or the taking of reprisals against him or the imposition of any other sanction upon him by reason of the exercise by the employee of a right

arising from the Labour Code. Sections 15 to 20, 118 to 137, 139, 139.1, 140, 146.1 and sections 150 to 152 of the Labour Code then apply, adapted as required."

33. Section 21 of the said Act, amended by section 37 of chapter 26 of the statutes of 1984, is again amended by replacing the first paragraph by the following paragraph:

"**21.** The Superior Court, which is a court of record, is composed of one hundred and twenty-seven judges including a Chief Justice, a Senior Associate Chief Justice and an Associate Chief Justice."

34. Section 32 of the said Act, amended by section 38 of chapter 26 of the statutes of 1984, is again amended by replacing the figure "seventy-eight" in the second line of the first paragraph of subparagraph 1 by the figure "seventy-nine".

35. Section 126.1 of the said Act is amended by replacing the word "four" in the fourth line by the word "five".

ACT TO AMEND THE CIVIL CODE AND
OTHER LEGISLATION RESPECTING ADOPTION

36. Section 14 of the Act to amend the Civil Code and other legislation respecting adoption (1983, chapter 50) is replaced by the following section:

"**14.** An adoption made outside Québec before 21 December 1983, while the adopter was domiciled in Québec, is recognized of right in Québec from 21 December 1983. Persons contemplated by this adoption have the same rights and obligations as if the adoption had been granted in Québec.

The clerk of the Youth Court of the district of the adopter's domicile, on presentation by the adopter of a certified copy of the judgment or instrument of adoption and of a sworn or solemnly affirmed statement to the effect that he was domiciled in Québec at the time the adoption took place, shall send a certificate of the judgment or instrument to the depositaries of the registers of civil status of that district and of the parish or municipality of the adopter so that they may draw up the new act of birth of the adopted person and enter it in the registers."

TRANSITIONAL AND FINAL
PROVISIONS

37. Section 14 of the Act to amend the Civil Code and other legislation respecting adoption, replaced by section 36, has effect from 21 December 1983 but does not, in any case contemplated by that section, invalidate any alteration that may have been made to the registers of civil status according to a different procedure.

38. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

39. This Act comes into force on the day it is assented to, except sections 1 to 30 and 32 to 35, which come into force on the date the Government fixes by proclamation, except provisions excluded thereby, which come into force on the later dates the Government fixes by proclamation.