

THIRD SESSION

THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

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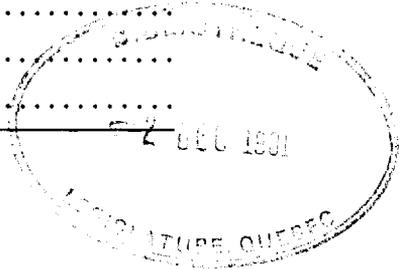
**Bill 18**

**An Act to provide for the carrying out  
of the family law reform and to amend  
the Code of Civil Procedure**

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First reading .....  
Second reading .....  
Third reading .....

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M. MARC-ANDRÉ BÉDARD

Minister of Justice

## EXPLANATORY NOTES

*The object of this bill is to allow the harmonious application of the Act to establish a new Civil Code and to reform family law by*

- introducing new procedures in family law matters into the Code of Civil Procedure,*
- completing the legislation on adoption,*
- transposing the fundamental principles of the new family law into other Québec legislation, and*
- amending certain transitional provisions in family law.*

*More particularly, in matters of civil procedure, the bill sets forth the rule that, in family law matters, court hearings in first instance are to be held in camera, unless the court decides otherwise; the Charter of human rights and freedoms is amended accordingly.*

*The bill also provides that actions are to be instituted by a declaration or motion and that, in both cases, the parties may address a joint application to the court; it also sets out specific rules to facilitate the proceedings, the conciliation of the parties or the hearing of the case, and it introduces the principle that a child is entitled to be represented by an attorney when his interest is at stake and the safeguard of his interest so requires.*

*Further, the bill specifies rules applicable to certain actions respecting marriage, nullity of marriage, separation as to property, parental authority, change of name or application for the surviving spouse's compensatory allowance, and above all it provides a procedure applicable to joint applications for separation as to bed and board or for divorce on a draft agreement, and a procedure applicable in matters of adoption such as applications for the return of a child, motions for a declaration of eligibility for adoption, and applications for placement or adoption; the bill specifies, finally, that an appeal lies to the Court of Appeal from judgments rendered in matters of adoption.*

*This bill also amends various Acts in order to do away with remaining distinctions based on sex, filiation or circumstances of*

*birth. This explains why the scope of the definition of related persons, where it applies to adopted persons, is being changed in several Acts, distinctions based on former concepts of legitimacy or illegitimacy of children are removed, and other Acts have been amended to do away with distinctions based on sex. In those Acts, "widow" is replaced by "surviving spouse", especially in respect of the assignment of certain pensions. The Companies and Partnerships Declaration Act is amended to remove from women separated as to property the obligation of filing a declaration of intention to carry on trade; the Education Act is amended by striking out the provision that, contrary to men, women could refuse to accept the public office of school commissioner or trustee or resign after having accepted; the Notarial Act is amended to remove the special provision allowing women notaries to use their own names, and the Cooperative Syndicates Act is amended by striking out the provision pertaining to the limited capacity of women married under community of property.*

*This bill also amends the Legal Aid Act in order to provide for a regulatory power respecting the payment of the fees of attorneys representing children, the Act respecting the Ministère des affaires sociales and the Youth Protection Act to provide for certain administrative procedures pertaining to adoption, to establish the rights and powers of directors of youth protection, to provide for a summary of the antecedents of a child or his adopting parents and to establish certain offences in matters of adoption.*

*Finally, this bill amends certain transitional provisions of the Act to establish a new Civil Code and to reform family law, to allow the gradual coming into force of certain provisions in the matter of separation as to bed and board or pertaining to the establishing of a compensatory allowance in cases of separation as to bed and board or divorce.*



## Bill 18

An Act to provide for the carrying out  
of the family law reform and to amend  
the Code of Civil Procedure

HER MAJESTY, with the advice and consent of the National  
Assembly of Québec, enacts as follows:

### PART I

#### AMENDMENTS TO THE CODE OF CIVIL PROCEDURE

**1.** Article 12 of the Code of Civil Procedure (R.S.Q., chapter  
C-25) is amended

(1) by replacing paragraph *b* by the following paragraph:

“(b) the matters governed by Titles I, IV, V and VI of Book  
V;”;

(2) by striking out paragraphs *c* and *e*;

(3) by replacing paragraph *d* by the following paragraph:

“(d) writs of *habeas corpus* and demands provided for in arti-  
cle 846;”;

(4) by replacing paragraph *i* by the following paragraph:

“(i) inscriptions for judgment upon acquiescence in a demand,  
upon discontinuance or by consent of the parties;”.

**2.** Article 13 of the said Code is replaced by the following arti-  
cle:

“**13.** The sittings of the courts are public wherever they may  
be held, but the court may order that they be held *in camera* in the  
interests of good morals or public order.

However, in first instance the sittings are held in camera where family law proceedings are concerned, unless the court orders a public sitting if, on the motion of either of the parties, it deems it expedient in the interests of justice.”

**3.** Article 26 of the said Code, amended by section 6 of chapter 37 of the statutes of 1979, is again amended

(1) by striking out the semicolon at the end of the first line;

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

“(6) from any judgment or order rendered in a matter of adoption.”

**4.** The French text of article 28 of the said Code is amended by replacing the words “Est aussi sujet à appel” in the first line by the words “Peut aussi faire l’objet d’un appel”.

**5.** Article 29 of the said Code, amended by section 7 of chapter 37 of the statutes of 1979, is again amended by replacing that part of the first paragraph which precedes subparagraph 1 by the following:

“**29.** An appeal also lies, with or without leave of a judge of the Court of Appeal, according as an appeal from the final judgment would or would not require such leave, from an interlocutory judgment of the Superior Court, the Provincial Court or, in a matter of adoption, the Youth Court:”.

**6.** Article 36.1 of the said Code is replaced by the following article:

“**36.1** The Youth Court has jurisdiction, to the exclusion of the Superior Court and the Provincial Court, in matters respecting adoption.

In other matters, the jurisdiction of the Youth Court and the procedure to be followed before it are determined by special Acts.”

**7.** Article 56 of the said Code is amended by adding the words “or by this Code” after the word “capacity” at the end of the second paragraph.

**8.** Article 70 of the said Code is replaced by the following articles:

“**70.** Actions in matters of family law are taken before the court of the common domicile of the parties or, failing such a domicile, the domicile of either of the parties.

However, oppositions to marriage, applications for dispensation from an age requirement and applications for authorization for a minor or a person of weak intellect to make marriage covenants are taken before the court of the place where the marriage is to be solemnized or of the domicile of the minor or the person of weak intellect.

Lastly, actions in matters of adoption are taken before the court of the domicile of the child or the plaintiff or, if the child has no domicile in Québec or if the adopters consent, before the court where the director of youth protection who was the last to have charge of the child exercises his functions.

**“70.1** In matters of family law, if the parties no longer live in the district where the judgment was rendered, applications for review of accessory measures may be brought before the court of the domicile of either of the parties.”

**9.** Article 114 of the said Code is replaced by the following article:

**“114.** The writ must state the surname, given names, occupation, domicile and ordinary residence of the plaintiff, and the surname, given names and last known residence of the defendant. It must also state the capacity of any party who figures therein otherwise than personally.”

**10.** Article 115 of the said Code is amended by striking out the third and fourth paragraphs.

**11.** Article 195 of the said Code is amended by replacing the first paragraph by the following paragraph:

**“195.** An action not contemplated in section 194 is inscribed for proof and hearing before the court or, if it is not an action for separation as to bed and board, in nullity of marriage or for divorce or an application in respect of filiation or of deprivation or restoration of parental authority, before the special prothonotary.”

**12.** The said Code is amended by inserting, after article 253, the following article:

**“253.1** Where the parties bring an action by way of a joint suit and are represented by the same attorney, the court may adjourn the hearing of the action until each party has appeared in person or obtained a new attorney, if it considers that the action raises real difficulties and that, owing to the mode of representation, it will not be possible for justice to be done.”

**13.** Article 257 of the said Code is amended by striking out paragraph 3.

**14.** Article 275 of the said Code is amended by inserting the words “for matters of family law and another” after the words “a special roll” in the second line.

**15.** Article 394 of the said Code is amended by replacing the words “actions in nullity of marriage” by the words “actions relating to filiation, actions for divorce, actions in nullity of marriage”.

**16.** Article 404 of the said Code is amended by replacing the second paragraph by the following paragraph:

“However, the court cannot maintain an action for separation as to bed and board, in nullity of marriage or for divorce, if the evidence of the plaintiff has not been given before the court.”

**17.** Article 448 of the said Code is amended by striking out the words “nullity of marriage, separation from bed and board, separation of property,” in the first two lines.

**18.** The heading of Chapter I of Title VII of Book II of the said Code is replaced by the following heading:

“ACQUIESCENCE IN A DEMAND”.

**19.** Article 457 of the said Code is replaced by the following article:

“**457.** Except in actions for separation as to bed and board, in nullity of marriage or for divorce or actions relating to filiation, the defendant may, at any stage of the proceedings, file in the office of the court an acquiescence in the whole or any part of the demand.”

**20.** Article 458 of the said Code is amended

(1) by replacing the first paragraph by the following paragraph:

“**458.** Acquiescence must be in writing and signed by the defendant or by his attorney, who must annex the special power of attorney he holds for that purpose.”;

(2) by replacing the words “confession of judgment” in the second line of the second paragraph by the word “acquiescence”.

**21.** Article 459 of the said Code is replaced by the following article:

**“459.** If acquiescence is unconditional for the whole of the demand, the prothonotary renders judgment immediately on inscription by one of the parties.”

**22.** Article 460 of the said Code is replaced by the following article:

**“460.** If acquiescence is not unconditional for the whole of the demand, the plaintiff must, within fifteen days after the service of the acquiescence upon him, give notice to the defendant of his acceptance or refusal.

In case of acceptance, the prothonotary, upon inscription, renders judgment in conformity with the acquiescence.

In case of refusal, the case is proceeded with in the ordinary manner. However, the plaintiff, without waiting for the result of the trial, may obtain judgment for the amount mentioned in the acquiescence; the action is then proceeded with only for the balance. In all cases, if the court decides that the refusal was unjustified, it cannot award the plaintiff more costs than in case of acceptance.

A plaintiff who has given notice neither of acceptance nor of refusal is deemed to have accepted; however, the court may relieve him of the consequences of his default, so long as judgment has not been rendered on the acquiescence.”

**23.** Article 461 of the said Code is amended by replacing the words “a confession” in the first and second lines by the words “an acquiescence”.

**24.** Article 471 of the said Code is amended by replacing the words “an action for separation from bed and board or for divorce” in the first paragraph by the words “matters of family law”.

**25.** The said Code is amended by inserting, after article 478, the following article:

**“478.1** The costs of joint actions are shared equally by the parties, unless they have agreed to the contrary or the court, in a substantiated decision, orders otherwise.

Similarly, costs resulting from the decision of the court to allow a child to be represented by an attorney in a proceeding are shared equally by the parties, unless the court, in a substantiated decision, orders otherwise.”

**26.** Article 553 of the said Code, amended by section 29 of chapter 37 of the statutes of 1979 and by section 4 of chapter 21 of the statutes of 1980, is again amended

(1) by striking out, at the end of paragraph 4, the following words: “they may however be seized for an alimentary debt;”;

(2) by inserting, in the second line of the second paragraph, a reference to paragraph 4 in the enumeration appearing therein.

**27.** The said Code is amended by adding, after article 734, the following article:

**“734.0.1** In an action in nullity of marriage, for separation as to property, for separation as to bed and board or for divorce, each spouse may also cause seizure before judgment of the moveables belonging to him, whether they are in the hands of his spouse or of a third person; he may, in addition, with leave of a judge, cause the seizure of property of his spouse that he would be entitled to share in if the matrimonial regime were dissolved.

The seized property remains in the custody of the debtor, unless a judge decides otherwise.”

**28.** Article 735 of the said Code is amended by replacing the second paragraph by the following paragraph:

“In the cases provided for in articles 733, 734.0.1 and 734.1, the leave of the judge must appear upon the requisition itself.”

**29.** Title IV of Book V of the said Code is replaced by the following:

“TITLE IV

“FAMILY LAW PROCEEDINGS

“CHAPTER I

“GENERAL PROVISIONS

“SECTION I

“PROCEEDINGS INTRODUCTIVE OF SUITS OR  
INTERLOCUTORY PROCEEDINGS

“ § 1.—*General provisions*

**“813.** Actions based on Book Two of the Civil Code of Québec are instituted by filing in the office of the court a declara-

tion or a motion stating the object of the action, the grounds on which it is founded and the conclusions sought.

Except where otherwise provided in this Title, the actions referred to in the first paragraph follow the general rules applicable to other actions and the designation of the parties, as well as the notice to the defendant, follows the rules provided for writs of summons.

**“813.1** Except where prohibited by law or by circumstances, any action by way of a declaration or motion may be taken jointly.

**“813.2** As soon as the action is received by the prothonotary he registers it and keeps a copy of it to open the record of the court.

**“813.3** Actions for separation as to property, for separation as to bed and board, in nullity of marriage or for divorce, actions in matters of filiation except proceedings in respect of placement or adoption, applications for the deprivation or restoration of parental authority and applications for the surviving spouse’s compensatory allowance are taken by a declaration. Other actions are taken by a motion.

**“813.4** Each spouse may advise the registrar of the registration division in which an immoveable on which either spouse may claim a right under his matrimonial regime or the immoveable used as principal family residence, if owned by either of them, is situated, of any action for separation as to property, separation as to bed and board, in nullity of marriage or for divorce.

The registrar is advised by serving a notice on him containing a description of the immoveables made in conformity with article 118; the registrar must forthwith register the action in the index of immoveables.

A judge may order the cancellation of the registration made against an immoveable, with or without security.

*“ § 2.—Proceedings by way of a declaration*

**“813.5** The declaration must be accompanied with a notice to the adverse party to appear within twenty days of service of the declaration.

Within the time fixed for appearance, the defendant must, where such is the case, state in writing, with his defense, the demands he intends to urge against the declaration.

**“813.6** Within the time fixed for appearance, the defendant must, where such is the case, state together the demand for secu-

rity for costs or motion in evocation and the preliminary exceptions he intends to urge against the declaration.

He must then file his defense within ten days of the judgment on such demand, motion and preliminary exception.

**“813.7** The action may be inscribed for proof and hearing before the court at the expiry of the time prescribed to appear and to plead.

*“ § 3.—Proceedings by way of a motion*

**“813.8** Every motion must be accompanied with a notice to the other party of the date of its presentation; it must be served not later than twenty days before that date.

However, in proceedings relating to the obligation of support or child custody, or in the case of incidental motions, service need not be made more than five days prior to the presentation of the motion.

In urgent cases, the judge may always reduce the time prescribed for service.

**“813.9** On the day fixed for the presentation of a motion, the defendant must, where such is the case, state the grounds in contestation of the motion and the demands he intends to urge.

He may, with leave of the court, contest the motion in writing within such time and on such conditions as the court may determine. In such a case, the grounds for contestation and the demands must be served on the defendant not later than five days before the date of presentation of the motion.

*“ § 4.—Proceedings by way of a joint action*

**“814.** Subject to Chapter V of this Title, a joint action is taken by filing in the office of the court a declaration or a motion signed by the parties and, if such is the case, by their attorneys, wherein the object and ground of their action, as well as their common and respective conclusions, are stated.

**“814.1** The prothonotary must, within twenty days of the filing, notify the parties and their attorneys of the date fixed for the hearing of their action.

**“814.2** Where one party discontinues his action, he or the other plaintiff may continue the suit alone. The action is then amended, served on the other party and continued in accordance with the rules provided for actions by way of a declaration or a motion.

## "SECTION II

## "PROCEEDINGS

**"815.** In matters concerning filiation, the court may, even of its own motion, order the impleading of any person whose interests may be affected by the judgment.

**"815.1** By way of exception, the judge or the court may, in cases where the parties are represented by attorneys, examine, in the presence of the attorneys, a consenting party outside the presence of the other party or a consenting witness outside the presence of the parties, provided the decision is substantiated and notified to the parties. In such a case, the attorneys may ask any pertinent question.

Unless waived by the parties, the depositions are then taken in stenography or recorded; the minutes of the testimony and a transcription of the stenographer's notes or a copy of the recording are transmitted to them, on demand.

**"815.2** At any time during the hearing, the court may order, even of its own motion, the production of any additional evidence or the summoning of any person whose testimony it considers expedient, or convoke, for hearing, any person whose interests could be affected by the judgment.

**"815.3** At any time before judgment the court may, for a period of thirty days, adjourn or suspend the hearing of the case in view of favouring the reconciliation or the conciliation of the parties.

At the expiry of that period, the hearing is continued unless the parties agree expressly to an extension for such period as they fix.

**"815.4** Unless the parties consent thereto, nothing said or written during a conference of conciliation or reconciliation is admissible as evidence in a court proceeding.

**"815.5** No information that would allow the identification of a party to a proceeding or of a child whose interest is at stake in a proceeding may be published or broadcast unless the court or the law authorizes it or unless that publication or broadcast is necessary to permit the application of an Act or a regulation.

Furthermore, the judge may, in a special case, prohibit or restrict, for such time and on such conditions as he may deem fair and reasonable, the publication or broadcast of information pertaining to a hearing of the court.

## "SECTION III

## "REPRESENTATION AND HEARING OF CHILDREN

**"816.** Where, in a proceeding, the judge or the court finds that the interest of a child is at stake and that it is necessary for the safeguard of that interest that the child be represented, he or it may, even of his or its own motion, adjourn the hearing of the action until an attorney is entrusted with representing the child.

The court may also make any expedient order to ensure that the child is represented; in particular, it may rule on the amount of the fees payable to the child's attorney and determine who is liable for their payment.

**"816.1** To ensure proper representation of the child, the judge must, in all cases where the interest of the child is opposed to that of the person having parental authority or that of the child's tutor and in those where the child is unable to determine his own interest, appoint a tutor *ad hoc* to the child.

**"816.2** Where a child is heard before a judge or the court, he may be accompanied by a person capable of assisting or reassuring him.

## "SECTION IV

## "JUDGMENTS

**"817.** In granting a separation as to bed and board, the nullity of a marriage or a divorce, the court adjudicates in respect of incidental motions, particularly motions concerning the custody, support and education of the children and the support due to the spouse and children, even children of full age.

**"817.1** Where the court renders a judgment giving rise to a rectification of an act of civil status, it shall, even *ex officio*, order the depositary to rectify the registers of civil status.

**"817.2** The prothonotary of the court which has rendered a judgment maintaining an action for separation as to property, for separation as to bed and board, in nullity of marriage or for divorce must forthwith give notice of the judgment to the person entrusted with keeping the central register of matrimonial regimes.

He must also forthwith serve the judgment, by registered or certified mail, on the depositary of the minute of the marriage contract and, where such is the case, on the depositary of the minute of any contract to modify the matrimonial regime; the depositary

must make a reference to the judgment served on him in the minute and any copy thereof issued by him, indicating the date of the judgment, the number of the record, the name of the district and the name of the court.

**“817.3** Where the initial judgment and the judgment granting an application for review of accessory measures are rendered in different districts, the prothonotary of the district where the judgment in review is rendered forwards a copy thereof to the prothonotary of the other district for filing in the record.

**“817.4** After the final judgment has acquired the status of *res judicata*, the court, where difficulties are likely to prevent the voluntary execution of the judgment, may make, on a joint motion of the parties, an order intended to facilitate voluntary execution in the manner most appropriate to the interests of the parties.

## “CHAPTER II

### “APPLICATIONS PERTAINING TO MARRIAGE

#### “SECTION I

##### “APPLICATIONS BY PERSONS UNDER LEGAL INCAPACITY

**“818.** The minor who applies for a dispensation from the age requirement in order to contract marriage must, not later than five days before the presentation of a motion, serve his application on the person having parental authority and, if such is the case, on his tutor and on the persons who have custody of him.

**“818.1** The minor who applies for leave to make marriage covenants must, not later than five days before the presentation of a motion, serve his application on the person having parental authority or, if such is the case, on his tutor. He must join a draft of his marriage contract to his application.

**“818.2** The curator who, in the name of a person of weak intellect, applies for leave to make marriage covenants must, not later than five days before the presentation of the motion, serve his application on the members of the family council called upon to give their opinion, attaching to it a draft of the marriage contract.

#### “SECTION II

##### “OPPOSITIONS TO MARRIAGE

**“819.** Opposition to marriage must, not later than five days prior to the presentation of the motion, be served on the officiant,

on the future spouses and, if such is the case, on the persons who must be called upon to give their opinion on an application for dispensation from the age requirement. In cases of urgency, the judge may reduce the prescribed time.

**“819.1** Unless the opposition is overtly ill-founded or the examination of the opposant shows that the opposition is frivolous, the judge admits the opposition and fixes an early date to hear it.

Admission of the opposition is a bar to the solemnization of the marriage.

**“819.2** The opposition must be presented on the date fixed, failing which any party may obtain a judgment dismissing the opposition. On being served a copy of the judgment, the officiant may proceed with the solemnization of the marriage.

**“819.3** If the opposition is dismissed, the court may, on a motion, condemn the opposant immediately to damages or fix a date to hear the proof on the damages.

**“819.4** Appeal from a judgment on opposition has precedence over any other appeal.

### “CHAPTER III

#### “ACTIONS IN NULLITY OF MARRIAGE

**“820.** An action for the annulment of a marriage contracted without a judicial dispensation by a person between sixteen and eighteen years of age must be served on the spouses and on the persons who should have been called upon to give their opinion if a dispensation from the age requirement had been applied for.

### “CHAPTER IV

#### “ACTIONS FOR SEPARATION AS TO PROPERTY

**“821.** No action for separation as to property may be proceeded with unless notice thereof is served, not later than twenty days previously, in a newspaper circulated in or as near as possible to the locality where the residence of the defendant is established.

### “CHAPTER V

#### “JOINT ACTIONS FOR SEPARATION AS TO BED AND BOARD AND FOR DIVORCE ON A DRAFT AGREEMENT

**“822.** Spouses who apply jointly for separation as to bed and board or for divorce, settling the consequences thereof in a draft

agreement, must file at the office of the court a declaration signed by each of them and, if such is the case, their attorneys.

**“822.1** The draft agreement is dated and signed by the spouses. It contains a full settlement of the consequences of their separation as to bed and board or of their divorce and indicates, if such is the case, the person entrusted with the liquidation of the matrimonial regime.

The draft agreement also settles the situation of the spouses during the proceedings unless they join to their declaration a provisional covenant bearing on the various points that may be the subject of provisional measures. This covenant must also be dated and signed by the spouses.

**“822.2** The judge presiding at court may, to verify that the spouses truly consent, hear the spouses separately, in the presence of their attorneys, if such is the case.

After ascertaining the admissibility of the action and verifying that the spouses truly consent, and, if necessary, having the clauses of the provisional covenant that would appear to him to be contrary to the interests of the children stricken out or amended, the judge examines the final draft agreement with the spouses and, if such is the case, their attorneys.

**“822.3** If the judge presiding at court finds that the draft agreement presented to him does not sufficiently preserve the interests of the children or of either spouse, he may dismiss the action for separation as to bed and board or for divorce or adjourn his decision until an amended draft agreement is presented.

**“822.4** The action for separation as to bed and board or for divorce lapses if the spouses omit to present an amended draft agreement within three months from the order of adjournment, unless the court extends the time prescribed, on the joint motion of the parties.

The action also lapses if either of the spouses discontinues the action.

**“822.5** When granting separation as to bed and board or divorce following a joint application accompanied with a draft agreement, the court, by its judgment, confirms the agreement.

## “CHAPTER VI

## “PROCEEDINGS PERTAINING TO ADOPTION

## “SECTION I

## “GENERAL PROVISIONS

“**823.** Proceedings in matters pertaining to the adoption of a minor must be served on the director of youth protection having jurisdiction in the child’s place of residence. The director may intervene of right in connection with the proceedings.

“**823.1** Whenever notice of a proceeding must be served on a party or on an interested person, the notice must be served and preserve the anonymity of the adopters to the father, mother and tutor, and vice versa. Furthermore, the notice must contain a statement of the object of the proceedings, the grounds invoked and the conclusions sought.

“**823.2** In any proceeding, unless all the parties agree to another manner of proceeding, the court must take the measures necessary to ensure that the persons who apply for the return of a child are not confronted with the adopters and are not able to identify them or to be identified by them.

“**823.3** The court must admit to its hearings a member of the Comité de la protection de la jeunesse or any other person authorized in writing by the Comité to assist thereat. In no case may such persons disclose any information thus obtained or be compelled to do so.

## “SECTION II

## “APPLICATIONS FOR THE RETURN OF A CHILD

“**824.** Any application made by the person who, having given general consent to adoption and having omitted to withdraw it within the prescribed time, wishes the child to be returned to him, must be served on the director of youth protection. The latter must give notice to the person having or exercising parental authority, to the father or mother if they no longer have parental authority and, if such is the case, to the tutor.

In the case of special consent to adoption, the application for the return of a child is served on the person to whom the child was entrusted.

## "SECTION III

## "DECLARATIONS OF ELIGIBILITY FOR ADOPTION

**"824.1** The motion for a declaration of eligibility for adoption is served on the father and mother of the child, if known, on the child's tutor, if such is the case, and on the child, if fourteen years of age or older. It is also served on a child ten years of age or older if so ordered by the judge.

## "SECTION IV

## "APPLICATIONS FOR PLACEMENT AND ADOPTION

**"825.** The application for placement of the child is presented by the adopter and by the director of youth protection, except in the case of special consent to adoption, where it may be presented by the adopter acting alone.

In the case where the adopter applies for the placement of a child who is not domiciled in Québec, the application may also be made by the adopter and by a person or agency legally qualified to act as intermediary in matters of adoption.

**"825.1** A notice of the application for placement stating the names of the applicants and their place of domicile is served on the child ten years of age or older. Where the child's father, mother or tutor has given consent to adoption during the year preceding the application, notice of the application is served on him or her by the director of youth protection.

**"825.2** The application for adoption of a person of full age must be served on the person whose adoption is applied for and, as the case may be, on his spouse, on his children fourteen years of age or older and on his ascendants.

**"825.3** The motion for the revocation of an order of placement must be served on the director of youth protection, who gives notice of it to the adopters and the person whose adoption is applied for.

**"825.4** The application for adoption is presented by the adopter. If the adoption is made by two persons, the application is made jointly.

**"825.5** Where a report indicating that a child has not adapted to his adopting family is filed with the court, the court sends a copy of the report to the adopter and, if such is the case, to

the tutor or attorney of the child. It notifies them at the same time of the period granted to contest the report.

If the person to be adopted is fourteen years of age or over, the court may, if it considers it expedient, send a copy of the report to that person; the court must do so if it intends to refuse adoption on the basis of the report.

## “CHAPTER VII

### “PROCEEDINGS RELATING TO PARENTAL AUTHORITY

“**826.** An application for deprivation of parental authority may be presented by any interested person and is served on the child’s father and mother and on his tutor or, if the child has no tutor, on the director of youth protection having jurisdiction in the child’s place of residence; the director may then intervene of right in relation to the application.

“**826.1** A motion presented by a deprived father and mother or by either of them to have the withdrawn rights restored must be served on the persons who were parties to the application for deprivation and on the person having parental authority and, if such is the case, on the tutor.

“**826.2** During the proceedings, the court may, even *ex officio*, order, in respect of the custody and maintenance of the child, any provisional measure it may deem expedient.

“**826.3** The judge presiding at court may, even *ex officio*, convene a family council to obtain its opinion on the designation of the person who is to exercise parental authority or on the appointment of a tutor.

## “CHAPTER VIII

### “MISCELLANEOUS PROVISIONS

“**827.** The motion for a change of name and correction of the registers of civil status of a minor must be served on the child’s father and mother, on his tutor, if such is the case, and on the child if he is fourteen years of age or older.

“**827.1** The application of a surviving spouse to have established the allowance due to him as compensation for his contribution to the enrichment of the patrimony of his deceased spouse is brought by a declaration which must be served on all the heirs and legatees who might be bound to discharge the debt.”

**30.** Article 1025 of the said Code is amended by replacing the first paragraph by the following paragraph:

“**1025.** Transaction, acceptance of a tender or acquiescence, except where it is unconditional for the whole of the demand, is valid only if approved by the court. This approval cannot be given unless a notice has been given to the members.”

## PART II

### AMENDMENTS TO VARIOUS ACTS

**31.** Section 39 of the Industrial Development Assistance Act (R.S.Q., chapter A-13) is amended by replacing paragraphs *b* and *c* of subsection 2 by the following paragraphs:

“(b) persons are connected by marriage if one is married to the other or to a person connected with the other by blood relationship or by adoption;

“(c) persons are connected by adoption if one has been adopted, legally or *de facto*, and would be connected with the other by blood relationship if his filiation by adoption were filiation by blood.”

**32.** Section 80 of the Legal Aid Act (R.S.Q., chapter A-14) is amended by inserting, after subparagraph *b*, the following subparagraph:

“(b.1) determine, taking into account the financial resources of a child or of his father and mother, the criteria according to which legal aid may be granted in order to ensure representation of a child before the court;”

**33.** Section 1 of the Family Allowances Act (R.S.Q., chapter A-17) is amended by striking out the words “legitimate, natural or adoptive” in the second line of paragraph *c* and in the second line of paragraph *d*.

**34.** Section 147 of the Automobile Insurance Act (R.S.Q., chapter A-25) is amended by replacing the words “confession of judgment” in the second and third lines and in the eighth line by the words “acquiescence in the demand”.

**35.** Section 49 of the Act respecting insurance (R.S.Q., chapter A-32) is amended by replacing subparagraphs *b* and *c* of paragraph 5 by the following subparagraphs:

“(b) persons are connected by marriage if one is married to the other or to a person who is connected with the other by blood relationship or by adoption; and

“(c) persons are connected by adoption if one has been adopted, legally or *de facto*, and would be connected with the other by blood relationship if his filiation by adoption were filiation by blood.”

**36.** Section 40 of the Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2) is amended by replacing subparagraphs *b* and *c* of the third paragraph by the following subparagraphs:

“(b) persons are connected by marriage if one is married to the other or to a person who is connected with the other by blood relationship or by adoption; and

“(c) persons are connected by adoption if one has been adopted, legally or *de facto*, and would be connected with the other by blood relationship if his filiation by adoption were filiation by blood.”

**37.** Section 3 of the Act respecting the change of name and of other particulars of civil status (R.S.Q., chapter C-10) is amended by replacing paragraphs *f* and *g* by the following paragraphs:

“(f) the name of his mother;

“(g) the name of his spouse and the date and place of their marriage;”.

**38.** Section 19 of the said Act is amended by striking out the word “irrévocable” in paragraph *d* of the French text.

**39.** Section 23 of the Charter of human rights and freedoms (R.S.Q., chapter C-12) is amended by replacing the third paragraph by the following paragraph:

“Furthermore, in proceedings relating to family law matters, hearings in first instance are held *in camera* unless the tribunal decides otherwise on the motion of one of the parties and if it deems it expedient in the interests of justice.”

**40.** Division IV of the Companies and Partnerships Declaration Act (R.S.Q., chapter D-1), comprising section 19, is repealed.

**41.** Section 4 of the Mining Duties Act (R.S.Q., chapter D-15) is amended by replacing paragraphs *b* and *c* by the following paragraphs:

“(b) persons are connected by marriage if one is married to the other or to a person connected with the other by blood relationship or by adoption; and

“(c) persons are connected by adoption if one has been adopted, legally or *de facto*, and would be connected with the other by blood relationship or by marriage if his filiation by adoption were filiation by blood.”

**42.** Section 107 of the Act respecting elections in certain municipalities (1978, chapter 63) is amended by replacing the words “a confession of judgment” in the fourth line of the second paragraph by the words “an acquiescence in the demand”.

**43.** Section 116 of the Act to govern the financing of political parties (R.S.Q., chapter F-2) is amended by replacing the words “a confession of judgment” in the fourth line of the second paragraph by the words “an acquiescence in the demand”.

**44.** Section 1 of the Taxation Act (R.S.Q., chapter I-3), amended by section 1 of chapter 13 of the statutes of 1980, is again amended by striking out

(1) subparagraph *a* from the definition of the word “child”;  
and

(2) the words “of the marriage” in the third line of the definition of “written separation agreement”.

**45.** Section 3 of the said Act is amended by replacing

(1) that part of paragraph *a* which precedes subparagraph *i* by the following:

“(a) where the amount was received by the surviving spouse, the lesser of:”;

(2) that part of paragraph *b* which precedes subparagraph *i* by the following:

“(b) where the employee died without leaving a surviving spouse or where no amount is deductible in computing for any year the death benefits received by the surviving spouse in respect of his years of service in an office or employment, the lesser of:”.

**46.** Section 21 of the said Act is amended by replacing paragraphs *b* and *c* by the following paragraphs:

“(b) persons are connected by marriage if one is married to the other or to a person connected with the other by blood relationship or by adoption; and

“(c) persons are connected by adoption if one has been adopted, legally or *de facto*, and would be connected with the other by blood relationship or by marriage if his filiation by adoption were filiation by blood.”

**47.** Section 312 of the said Act, amended by section 22 of chapter 13 of the statutes of 1980, is again amended by striking out

- (1) the words “of the marriage” in the fourth line of paragraph *a*;
- (2) the words “of the marriage” in the third line of paragraph *b*.

**48.** Section 313 of the said Act is amended by striking out the words “of the marriage” in the fifth line.

**49.** Section 336 of the said Act, amended by section 27 of chapter 13 of the statutes of 1980, is again amended by striking out

- (1) the words “of the marriage” in the fourth and fifth lines of subparagraph *a* of subsection 1;
- (2) the words “of the marriage” in the third and fourth lines of paragraph *b* of subsection 1;
- (3) the words “of the marriage” in the fifth line of subsection 2.

**50.** Section 699 of the said Act is amended by replacing the words “an illegitimate child is wholly dependent on his mother and that any other child” in the third and fourth lines by the words “a child”.

**51.** Section 1015 of the said Act, amended by section 103 of chapter 13 of the statutes of 1980, is again amended by replacing the word “widow” in the second line of paragraph *d* by the words “surviving spouse”.

**52.** Section 37 of the Highway Victims Indemnity Act (R.S.Q., chapter I-5) is amended by replacing the words “confession of judgment” in the second and third lines and in the seventh line by the words “acquiescence in the demand”.

**53.** Section 167 of the Education Act (R.S.Q., chapter I-14) is amended by striking out the word “women,” in the second line of the second paragraph.

**54.** Section 19 of the Act respecting the Ministère de la justice (R.S.Q., chapter M-19) is amended by replacing the last two lines by the following lines: “transmitted to him under article 474 of the Civil Code and article 817.2 of the Code of Civil Procedure.”

**55.** The said Act is amended by inserting, after section 19, the following section:

**“19.1** The notice given according to section 19 must state

(1) the surname and given name and the date of birth of each spouse,

(2) the surname and given name of each spouse’s father and mother, if they are known,

(3) the date of any marriage contract between the spouses and the surname, given name and domicile of the notary who executed it, and

(4) the date and object of any judgment granting separation as to property, separation as to bed and board, the nullity of the marriage or a divorce, the number of the record, the name of the district and the name of the court.”

**56.** Section 3 of the Act respecting the Ministère des affaires sociales (R.S.Q., chapter M-23) is amended by replacing paragraph *k* by the following paragraphs:

“(k) determine the possibilities for the adoption of children domiciled outside Québec, taking into account the objectives defined by the Minister of Cultural Communities and Immigration under section 3 of the Act respecting the Ministère des Communautés culturelles et de l’Immigration (R.S.Q., chapter M-16);

“(l) obtain from the government departments and from any public or private agency all information available for the purposes of implementing the department’s policy.”

**57.** Section 4 of the Notarial Act (R.S.Q., chapter N-2) is amended by replacing subsection 2 by the following subsection:

“(2) Every notary shall practice his profession under the surname and given name appearing on his act of birth and his official signature shall comprise those names only.”

**58.** Section 8 of the Public Protector Act (R.S.Q., chapter P-32) is amended by replacing the words “to the widow” in the third line of the fifth paragraph by the words “to the surviving spouse”.

**59.** Section 33 of the Youth Protection Act (R.S.Q., chapter P-34.1) is amended by adding the following paragraph:

“He shall also exercise such powers and carry out such duties as may be conferred upon him in matters of adoption.”

**60.** The title of Division VII of Chapter IV of the said Act is replaced by the following title:

## "TUTORSHIP AND ADOPTION".

**61.** Section 71 of the said Act is amended by striking out the third paragraph.

**62.** The said Act is amended by inserting, after section 72, the following sections:

**"72.1** The director, if he considers that adoption is the measure most likely to ensure the respect of children's rights, must take all reasonable means to facilitate it, in particular,

- (a) by studying applications for adoption as the need arises;
- (b) by receiving the general consent required for adoption;
- (c) by taking charge of the children entrusted to him for adoption;
- (d) where necessary, by causing the child to be judicially declared eligible for adoption;
- (e) by seeing to the placement of the child.

**"72.2** The Minister of Social Affairs may, according to law, enter into an agreement with another government or with any of its departments or bodies in matters relating to the adoption of children domiciled outside Québec.

The Minister of Social Affairs may also enter into such an agreement with any other organization dealing mainly with the defence of children's rights, the promotion of their interests and the improvement of their living conditions.

**"72.3** Whether the adoption takes place in Québec or elsewhere, an adopter domiciled in Québec may adopt a child domiciled outside Québec only through the intermediary of the Minister of Social Affairs, the director, or any government, department or body acting in accordance with an agreement referred to in section 72.2, which alone may act in such capacity.

The adopter's application must also be examined by the director.

**"72.4** The Minister of Social Affairs may, in such cases and according to such criteria and conditions as are provided by regulation, grant financial assistance in order to further the adoption of a child."

**63.** The said Act is amended by inserting, after section 131, the following sections:

**“131.1** As soon as the order of placement is granted, the director gives to the adopter requesting it a summary of the child’s antecedents.

He also gives to the parents requesting it a summary of the adopter’s antecedents.

Every child is entitled to receive, on request, a summary of his own antecedents if he is fourteen years of age or older.”

**“131.2** Every summary must preserve the parents’ or the adopter’s anonymity, and must comply with the norms provided by regulation.”

**64.** Section 132 of the said Act is amended by adding, after subparagraph *d*, the following subparagraphs:

“(e) to prescribe the norms relating to the content of the summary of the child’s and the adopter’s antecedents;

“(f) to determine in what cases, according to what criteria and on what conditions the Minister of Social Affairs may grant financial assistance to further the adoption of a child.”

**65.** The said Act is amended by inserting, after section 135, the following section:

**“135.1** Whether the placement or the adoption takes place in Québec or elsewhere and whether or not the child is domiciled in Québec, any person who

(a) gives or receives or accepts to give or receive, directly or indirectly, a payment or a benefit either for finding a placement or contributing to a placement with a view to adoption, or for obtaining the adoption of a child,

(b) contrary to this Act, places, attempts to place or contributes to the placement of a child with a view to his adoption or contributes to his adoption, or

(c) contrary to this Act, adopts or attempts to adopt a child, is guilty of an offence and liable, on summary proceedings, in addition to payment of the costs, to a fine of not more than \$1 000 or, failing payment, to imprisonment for not more than six months in the case of an individual, and not more than \$5 000 in the case of a corporation.

In the case of a subsequent offence, the fines and, where such is the case, the imprisonment provided for in the preceding paragraph are doubled.”

**66.** Section 3 of the Settlers Protection Act (R.S.Q., chapter P-38) is amended by replacing the word “widow” in the ninth line of the second paragraph by the words “surviving spouse”.

**67.** Section 4 of the said Act is amended by replacing the word “widow” in the fourth line of the first paragraph by the words “surviving spouse”.

**68.** The Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by striking out

- (1) the words “legitimate, natural or adopted” in section 86;
- (2) the words “legitimate or natural” in the third paragraph of section 172;
- (3) the words “legitimate, natural or adopted” in the third paragraph of section 173;
- (4) the words “legitimate, natural or adoptive” in the second paragraph of section 174.

**69.** Section 97 of the Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12) is amended by replacing the word “widow” in the first line of that section by the words “surviving spouse”.

**70.** Section 107 of the said Act is replaced by the following section:

“**107.** If the officer dies before an additional pension is granted and an additional half pension does not become payable, the amount of the transferred contribution must be returned to the surviving spouse or, if there is no surviving spouse, to the children or, failing children, to the legal representatives.”

**71.** Section 6 of the Public Buildings Safety Act (R.S.Q., chapter S-3) is amended by replacing the words “girls and women” in the first and second lines of the fifth paragraph by the word “persons”.

**72.** Section 14 of the Cooperative Syndicates Act (R.S.Q., chapter S-38) is amended by striking out the words “and married women, even common as to property,” in the first line of the third paragraph.

**73.** The Courts of Justice Act (R.S.Q., chapter T-16) is amended by replacing

- (1) the word “widow” by the words “surviving spouse” in section 106;

(2) the word “widows” by the words “surviving spouses” in section 108;

(3) the word “widow” by the words “surviving spouse” in section 108.2.

**74.** Section 114 of the said Act is amended by replacing paragraph *b* by the following paragraph:

“(b) cases of adoption;”.

## PART III

### FINAL AND TRANSITIONAL PROVISIONS

**75.** Section 68 of the Act to establish a new Civil Code and to reform family law (1980, chapter 39) is amended

(1) by replacing the words “and divorces granted” in the first paragraph by the word “granted”;

(2) by replacing the figure “571” in the first paragraph by the figure “536”;

(3) by adding the following paragraph:

“Similarly, divorces granted prior to the coming into force of articles 556 to 559 of the Civil Code of Québec with regard to effects that are connected with the settlement of the spouses’ financial interests, or prior to the coming into force of articles 560 to 571 of the said Code with regard to other effects of the divorce, continue to be subject to former articles 206 to 217 of the Civil Code of Lower Canada and to the Divorce Act (R.S.C., 1970, chapter D-8).”

**76.** Section 69 of the said Act is amended by striking out the words “and articles 813 to 820 of the Code of Civil Procedure” at the end of the first paragraph.

**77.** Section 70 of the said Act is amended by replacing the second paragraph by the following paragraph:

“Moreover, those provisions of articles 555 to 571 of the Civil Code of Québec which govern the effects of divorce are, as and when they come into force, immediately applicable to the cases then pending.”

**78.** Section 71 of the said Act is amended

(1) by striking out the words “or for divorce” in the first paragraph;

(2) by replacing the figure "571" in the first paragraph by the figure "536";

(3) by adding the following paragraph:

"The same rule applies to applications for divorce made after the coming into force of articles 538 to 542."

**79.** The said Act is amended by inserting, after section 71, the following section:

**"71.1** From the coming into force of article 439, 526, 528 or 535 of the Civil Code of Québec, the articles of Title Two of Book Two of the said Code relating to divorce are deemed to be in force to such extent as they are necessary for the application of the provisions of the said Code concerning the effects of nullity of marriage or the grounds, procedure and effects of separation as to bed and board."

**80.** Articles 816 to 816.2 of the Code of Civil Procedure, enacted by section 29 of this Act, apply to cases that are pending at the time of the coming into force of the said articles.

**81.** Actions pending at the coming into force of a provision of this Act which provides a new procedure in their respect may be continued and decided in accordance with the former procedure if all parties agree thereto.

**82.** Every regulation made under the Adoption Act (R.S.Q., chapter A-7) remains in force, to the extent that it is consistent with the Civil Code, the Code of Civil Procedure and the Youth Protection Act (R.S.Q., chapter P-34.1), until it is repealed or replaced.

**83.** Sections 44 to 51 will apply to the taxation year during which they come into force and to subsequent years.

**84.** This Act will come into force on the date fixed by proclamation of the Government, except those provisions excluded by the proclamation, which will come into force on any later date that may be fixed by proclamation of the Government.