

THIRD SESSION

THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

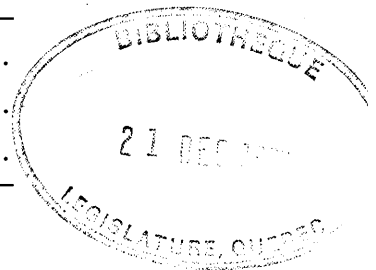
Bill 106

**An Act to add the reformed law of persons
to the Civil Code of Québec**

First reading

Second reading

Third reading



M. MARC-ANDRÉ BÉDARD

Minister of Justice

EXPLANATORY NOTES

The object of this bill is to reform the law of persons and to add to the Civil Code of Québec a preliminary provision intended to situate the Civil Code in the legislative context.

Book One comprises nine titles. The first deals with the rights attached to personality. It contains six chapters dealing, respectively, with the enjoyment of civil rights, the exercise of those rights, the physical integrity of the individual, respect for children's rights, respect for reputation and privacy and respect for the bodies of the dead.

Title Two, which is divided into four chapters, deals successively with the assignment and use of a name, change of name by administrative or judicial process and change of indication of sex in the acts of civil status.

Title Three sets out the rules on domicile.

Title Four sets out, in three distinct chapters, the rules on majority, minority and emancipation.

Title Five has seven chapters. They deal, respectively, with the responsibilities of tutorship, legal tutorship, dative tutorship, the administration of tutors, tutorship councils, supervision of tutorship and end of tutorship.

Title Six is concerned with the protective supervision of persons of full age. Chapter I sets out the general principles and the other five chapters deal, in turn, with the institution of protective supervision, curatorship to persons of full age, tutorship to persons of full age, advisers to persons of full age and the end of protective supervision.

Title Seven deals with absentees and death. Its four chapters give the rules on absentees, judicial declarations of death, return of absentees and proof of death.

Title Eight is devoted to civil status and comprises seven chapters. It deals with the officer of civil status, the register of civil status and the acts of civil status, namely, acts of birth, acts of marriage and acts of death. It also deals with alterations to the register, keeping and publicity of the register and the former registers of civil status.

Lastly, Title Nine of Book One deals with legal persons. In Chapter I it sets out the general rules on legal personality, and in the succeeding four chapters treats of the constitution of legal persons, the accountability and disabilities of their members and directors, the functioning of legal persons and the dissolution and liquidation of legal persons.

Bill 106

**An Act to add the reformed law of persons
to the Civil Code of Québec**

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

1. A preliminary provision and Book One are added to the Civil Code of Québec, established by chapter 39 of the statutes of 1980, before Book Two, “The Family”, and read as follows:

“PRELIMINARY PROVISION

The Civil Code, except as specially provided by law, governs persons in Québec, the exercise of their rights, their relations with each other, and their property.

This Code comprises a body of rules which lays down the law on every matter within the spirit, the letter or the object of its provisions and is the foundation of all the other laws.

Where the rules are silent or insufficient, they are complemented by the rules derived from established jurisprudence and received doctrine or general principles of law, as well as occasionally from custom and usage.

BOOK ONE

OF PERSONS

TITLE ONE

RIGHTS ATTACHED TO PERSONALITY

CHAPTER I

THE ENJOYMENT OF CIVIL RIGHTS

1. Every human being possesses juridical personality. He is the subject of rights from birth till death.

2. Every human person has the full enjoyment of his civil rights. In no case may he renounce them.

3. Every person has a *patrimonium*.

The *patrimonium* may be divided or encumbered, but only to the extent provided for by law.

4. Every person also possesses rights and obligations which are *extra patrimonium* and peculiar to his person.

CHAPTER II

EXERCISE OF CIVIL RIGHTS

5. Every human person has the full exercise of his civil rights.

A human person exercises his civil rights through a representative in the cases provided by law.

6. Every person exercises his civil rights under the surname and one or several of the given names assigned to him and attested in his act of birth.

7. Every person must exercise his civil rights in good faith. Good faith is always presumed.

8. No person may exercise a right with the intent of injuring another or in a way that may cause damage to him without a serious and legitimate interest.

9. No person may, in exercising any civil right, contravene the imperative provisions of the law nor the laws of public order, under pain of nullity of the act.

10. No person may renounce the exercise of his civil rights except to the extent consistent with public order.

CHAPTER III

PHYSICAL INTEGRITY OF PERSONS

11. Every person is inviolable and is entitled to his physical integrity.

No harm may be done to the physical integrity of a person without his free and enlightened consent given according to law nor unless it is authorized by law.

12. No one may subject a person to an examination, a treatment or an operation required by his physical or mental state of health or keep him under care in a health establishment without his consent.

No consent is required in an emergency if the life of the person is in danger, or if his physical integrity is in danger and his consent is not obtainable in time.

13. Consent is given for a minor by the person having parental authority or, in case of impediment, by his tutor.

14. Consent is given for a person of full age and incapable of discernment by his tutor or curator; if he is not so represented, it is given by his spouse or, if he has no spouse or his spouse is under an impediment, by a close relative.

15. The authorization of the court is required if the minor capable of discernment objects, if the consent of the representative, the spouse or the close relative cannot be obtained or if the refusal to consent is not justified in the interest of the person.

16. A minor fourteen years of age and capable of discernment may consent alone to an examination or treatment required by his physical or mental state of health.

However, if the minor's state requires that he be kept under care in an establishment for over twelve hours or subjected to extended treatment, the person having parental authority or his tutor must be advised.

17. A person of full age may alienate part of his body *inter vivos* or submit to an examination, treatment or operation not required by his state of health, as well as to an experiment, provided the risk assumed is not disproportionate to the anticipated benefit.

18. A minor capable of discernment may act as in article 17 with the consent of the person having parental authority if the alienation, treatment, operation or experiment involves no permanent or irreversible effect on him nor any risk to his health.

19. No person being temporarily or permanently incapable of discernment may alienate *inter vivos* part of his body or be subjected to an examination, treatment or operation not required by his state of health without the consent of his tutor or curator. No such person may be subjected to an experiment.

20. No examination, treatment or operation entailing a permanent or irreversible effect on or a serious risk to a minor or a person of full age and incapable of discernment may take place without the authorization of the court, if it is not required by his state of health.

21. When the court is called upon to decide an application for authorization, it shall obtain the opinions of experts, of the tutor or of the curator to the person and of the tutorship council.

The court is required to satisfy itself that the examination, treatment, operation or experiment is given or done in the person's interest, that it is not harmful to him and that it is advisable in the circumstances.

The court must also obtain the opinion of the person concerned unless that is impossible, and must respect his refusal except for serious reasons.

22. Consent to an examination, treatment, operation or experiment not required by a person's state of health must be given in writing.

The consent may be withdrawn at any time, even verbally.

23. The alienation of a part of one's body must be gratuitous, unless the alienated part is capable of regeneration.

24. Where a person is a real danger to himself or to others owing to his mental state, the court, on the application of a physician or any other interested individual and on proof of the person's state, may order that he undergo a psychiatric examination and be placed under care, notwithstanding his objections.

Where the danger is imminent, a physician practising in a health or social services establishment must, at the request of any interested individual, admit the person so that he may be kept under care.

25. No person may be kept against his will under care in a health or social services establishment owing to his mental state for over twenty-four hours without a court order for a psychiatric examination.

26. A person kept under care in an establishment for a psychiatric examination must be released as soon as there is no further justification for keeping him.

27. The physician must carry out the examination, give notice of this findings and file his report in the court within ten days of the decision, unless the time limit is extended.

In no case may the report be disclosed without the authorization of the court.

28. If a person of full age is not already under protection and if the report of a psychiatric examination finds that it is necessary to keep the person under care in an establishment or that he is unable to care for himself or to administer his property, the notice of the findings of the report institutes upon being filed with the court, an application to institute protective supervision.

29. Where a person incapable of discernment or a minor is kept under care in a health or social services establishment, the person having parental authority and, where such is the case, the tutor, the curator or the close relatives must be informed by the establishment beforehand of the plan of treatment administered to the person, of any operations required, and of any important change in his living conditions or treatment.

CHAPTER IV

RESPECT OF CHILDREN'S RIGHTS

30. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are able to give to him.

31. In every decision concerning a child, the determining factors must be the respect of the child's rights and the child's interest.

Consideration may be given in particular to the child's age, health, character and family surroundings, and the other circumstances in which he lives.

32. The court may, in every application brought before it affecting the interest of a child, give the child an opportunity to be heard.

CHAPTER V

RESPECT OF REPUTATION AND PRIVACY

33. Every person has a right to the respect of his reputation and privacy; in no case may they be attacked or invaded without his consent or unless it is authorized by law.

34. The use of a person's name, image or voice without his consent and for a purpose other than the legitimate information of the public entitles him, in addition to any other recourse, to demand that it be stopped.

35. Every person may examine and cause a copy to be made at his own expense of any file concerning him that a person prepares or keeps on him for the information of a third person, subject to the Acts respecting access to documents held by public bodies and the protection of personal information.

He may cause inaccurate, incomplete or equivocal information to be rectified and cause irrelevant information, if it is unjustly prejudicial to him, to be deleted.

36. Where the law does not provide the conditions or modalities of exercise of the right of access to or rectification of a file, the court shall determine them on a motion by the person concerned.

CHAPTER VI

RESPECT FOR THE BODY AFTER DEATH

37. A person of full age may determine the nature of his funeral and the disposal of his remains, subject to the laws respecting burial and cremation.

Failing the expressed wishes of the deceased, common practice prevails. The expenses are then charged to the succession, which shall reimburse them to the person who paid them.

38. Every person, even a minor, may, for medical or scientific purposes, give his remains or authorize the removal of organs or tissues therefrom.

The wish must be expressed in writing or verbally before two witnesses and may be revoked in the same manner. It must be followed, except for a serious reason.

39. A physician may remove part of the body of a deceased person if, in the absence of knowledge of the wishes of the deceased,

he obtains the consent of the spouse or, failing a spouse or if his spouse is under an impediment, a close relative.

The consent is not required when two physicians attest in writing to the impossibility of obtaining it in due time, the urgency of the operation and the serious hope of saving a human life.

40. No part may be removed unless the death of the donor has been attested by two physicians who do not participate either in the removal or in the transplant.

41. An autopsy may be performed in the cases provided by law or with the written consent of the deceased or at the request of the attending physician or of the spouse or a close relative of the deceased.

42. The court or a coroner may, at the request of a physician or any interested person, order the performance of an autopsy on the deceased if the circumstances surrounding his death justify it.

43. No person may embalm, bury or cremate a human body before the expiry of twelve hours after death.

44. Subject to compliance with the prescriptions of law, it is permissible to disinter a body on the order of a court or of a coroner, on the change of destination of its burial place, or in order to bury it elsewhere or to repair the tomb or coffin.

TITLE TWO

NAME

CHAPTER I

ASSIGNMENT OF NAME

45. Every person has a surname and at least one given name assigned to him, and these are attested in his act of birth.

46. A child shall be given, at the choice of his father and mother, one or more given names and the surname of one of them or a surname consisting of not more than two parts taken from the surnames of his father and mother.

47. In case of disagreement over the choice of a surname, the registrar of civil status shall give the child a surname consisting of two parts, one part being taken from the surname of his father and

the other from that of his mother, according to their choice, respectively.

48. If the disagreement is over the choice of a given name, the registrar of civil status shall give the child two given names chosen by his father and his mother, respectively.

49. If only the paternal or the maternal filiation of a child is established, he bears the surname of his father or of his mother, as the case may be, and one or more given names chosen by that parent.

50. A child whose filiation is not established bears the surname and given name given to him by the registrar of civil status.

CHAPTER II

USE OF NAME

51. Every person has a right to respect for his name.

52. Every person who uses a name other than his own is responsible for any resulting confusion or damage.

53. The holder of a name, his spouse or his close relatives may object to the use of that name by a third person, if that person has no right to do so.

CHAPTER III

CHANGE OF NAME

SECTION I

GENERAL PROVISION

54. No change of a person's name, whether of his surname or of his given name, may be made unless it is authorized by the registrar of civil status or, in certain cases, by the court.

SECTION II

CHANGE OF NAME BY ADMINISTRATIVE PROCESS

55. A change of name may be authorized by the registrar of civil status

(1) when the name generally used does not correspond to that entered in the act of birth;

(2) when the name is of foreign origin or too difficult to be pronounced or written in its original form;

(3) when the name invites ridicule or has become infamous.

A change of name may be authorized also for any other reason deemed sufficient that is not of the exclusive jurisdiction of the court.

56. A person of full age who is a Canadian citizen and who has been domiciled in Québec for at least one year may apply for the change of his name as well as the change of the name of his minor children who bear the same name or part of that name.

57. A person applying for a change of name shall state his reasons and give, where applicable, the name of his spouse, as well as the names of his father and mother and of his children.

The person shall attest under oath that the reasons stated and the information given are true, and shall append all the necessary documents to his application.

58. Except for compelling reasons, no application for the change of the name of a minor child may be granted over the objections of the tutor, or of the minor if he has attained fourteen years of age.

59. Before authorizing a change of name, the registrar of civil status must assure himself that notices of the application have been published; he must give to third persons who so request the opportunity to state their views.

The registrar may also require the applicant to furnish any necessary additional explanations and information.

60. Every other rule respecting the administrative procedure for a change a name, the publication of the application or the duties payable shall be determined by the Minister of Justice and published in the *Gazette officielle du Québec*.

SECTION III

CHANGE OF NAME BY WAY OF JUDICIAL PROCESS

61. Only the court may authorize the change of name of a child, even a child who has attained the age of majority, in the case of change of filiation, deprivation of parental authority or the condemnation of one of the parents to an infamous punishment.

The court may also authorize the change when exceptional circumstances justify it and the tutor consents to it.

62. The application respecting a minor child may be presented by the child himself if he is fourteen years of age. Notice of the application must be given to the person having parental authority and to the tutor.

63. In case of adoption, the court shall assign to the adopted person the name chosen by the adopter unless, at the request of the adopter or of the adopted person, it allows him to keep his original name.

64. The court may, at the request of the person concerned, review the decision of the registrar of civil status not to authorize a change of name.

SECTION IV

EFFECTS OF A CHANGE OF NAME

65. A change of name becomes effective upon the decision authorizing it.

Notice of the change must be published in the *Gazette officielle du Québec*, except with special exemption from the Minister of Justice.

66. A change of name does not in any way affect the rights or the obligations of a person.

67. All documents made by a person who has changed his name, or that were made in his favour under his former name, are deemed made under his new name.

The person or a third person concerned may require that the documents be rectified, at his expense, by indicating the new name.

68. Any proceedings to which a person who has changed his name is a party shall be continued under his new name without continuance of suit.

CHAPTER IV

CHANGE OF DESIGNATION OF SEX

69. The registrar of civil status, on the application of any person who has successfully undergone medical treatments and surgical operations involving a structural modification of the sexual organs intended to change the secondary sexual characteristics of that person, may change the designations of the given name and sex which appear on the act of birth of that person.

Only an unmarried person of full age who has been domiciled in Québec for at least one year and is a Canadian citizen may make an application under this article.

70. The application must be accompanied with a certificate of the physician who administered the treatment and all other related documents.

In addition, a physician practising in Québec who has not taken part in the treatments nor in the operations must certify that the applicant has successfully undergone the proper treatment.

71. An application for a change of given name and designation of sex is subject to the same rules of procedure as an application for a change of name, and to the same publication requirements and the same duties.

The decision of the registrar of civil status not to authorize the change may be reviewed by the court, at the request of the person concerned.

72. A change of given name and designation of sex produces the same effects as a change of name, and in the same manner.

In the register of civil status, the designation is entered in the act of birth only at the request of the person concerned.

TITLE THREE

DOMICILE

73. The domicile of a person is at the place of his principal residence unless he has manifested his intention of retaining it at the place of his former principal residence.

74. A person changes his domicile by establishing his principal residence in another place without manifesting any intention of retaining his former domicile; he may also change his domicile by abandoning the former domicile he had retained.

75. Proof of intention results from the declarations of the person and from the circumstances of the case.

76. A person whose domicile cannot be determined under articles 73 to 75 is presumed to be domiciled at the place where he is.

If the place where the person lives is unknown, he is presumed to be domiciled at his last known domicile.

77. The domicile of an unemancipated minor is with his tutor or, failing that, with the person having parental authority.

78. Where tutorship or parental authority is exercised by the father and mother but they have no common domicile, the minor is presumed to be domiciled with the parent who has custody of him or the parent designated by the court.

In the absence of a judicial decision granting custody of the minor, he is presumed to be domiciled with the parent with whom he ordinarily resides.

79. A person of full age who is placed under tutorship is domiciled with his tutor, and if placed under curatorship is domiciled with his curator.

80. Spouses may have separate domiciles without prejudice to the rules respecting living together.

81. The parties to a juridical act may, in writing, elect domicile under that act in view of its execution or the exercise of the rights arising from it.

Election of domicile is not presumed.

TITLE FOUR

MAJORITY AND MINORITY

CHAPTER I

MAJORITY

82. The age of majority is eighteen years.

On attaining full age, namely the age of majority, every person ceases to be a minor and becomes fully capable of exercising all his civil rights.

83. In no case may the capacity of a person who has attained the age of majority be limited except by express provision of law or by a judgment awarding the institution of protective supervision.

CHAPTER II

MINORITY

84. A minor has the capacity to exercise his civil rights according to his age and his power of discernment, except as otherwise specified or restricted by law.

85. A minor may, within the limits of his age and means, contract alone to meet his ordinary and habitual needs.

86. A minor retains the management of the proceeds from his work; he also retains the management of complementary allowances he receives for his ordinary and habitual needs.

87. A minor is deemed to be of full age for the purposes of all acts pertaining to the exercise of his trade.

88. A minor is accountable for damage resulting from an offence or a quasi-offence committed by him.

89. Except where he may act alone, a minor is represented by his tutor for the exercise of his civil rights or, where permitted by law, by the person having parental authority.

90. Unless the law or the nature of the act does not allow it, an act that may be performed by a minor alone may also be performed by his representative.

91. In judicial matters, a minor must be represented by his tutor; his actions are brought in the name of his tutor.

He may, however, with leave of the court, institute alone an action relating to his status or to an act that he may perform alone; he may also in such a case act alone as defendant.

92. In addition to the other cases provided for by law, a minor may invoke, alone, in his defence, any irregularity arising from lack of representation or incapacity resulting from his minority.

93. Every act performed by a minor where the law does not allow him to act alone is null.

94. Acts performed without the formalities prescribed to the tutor may be annulled at the request of the minor, without his having to prove damage.

95. If a minor suffers damage from an act that he performed alone whereas he should have been represented, he may demand that it be annulled or that the obligations resulting from it be reduced.

96. A minor is barred from recourse in nullity or reduction if the damage he suffers is caused solely by a fortuitous and unforeseen event.

97. A mere declaration by a minor that he is of full age does not deprive him of his recourse in nullity or reduction.

98. A minor may, once having attained the age of majority, confirm an act performed alone while a minor, except an act that the law did not allow him to perform. After accounts of tutorship are rendered, he may confirm an act performed by his tutor where all the formalities had not been observed.

CHAPTER III

EMANCIPATION

SECTION I

EMANCIPATION BY THE TUTOR OR THE COURT

99. The tutor may, after obtaining the opinion of the tutorship council, emancipate a minor if he is sixteen years of age and requests it, by filing a declaration to that effect in the court of his domicile.

Emancipation is effective from the filing of the declaration.

100. The court may also, after obtaining the opinion of the tutor and of the tutorship council, emancipate a minor who requests it.

101. The tutor is accountable for his administration to the emancipated minor. He continues, however, to assist the minor, though gratuitously.

102. Emancipation increases the minor's capacity to exercise his civil rights. It does not put an end to his minority nor does it confer all the rights resulting from majority.

103. An emancipated minor may establish his own domicile, and he ceases to be under the authority of his father and mother.

104. An emancipated minor may perform all acts of simple administration; he may also sign leases for terms not exceeding three years and give property according to his means, provided he does not materially affect his capital.

A minor has no recourse by reason of his minority in nullity of, or reduction of obligations resulting from, an act contemplated in this article, even if he suffers damage therefrom.

105. An emancipated minor must be assisted by his tutor for any act beyond simple administration, and in particular for bringing a real action.

106. Loans or borrowings of large amounts, considering the means of an emancipated minor, and deeds of alienation of immoveables or of undertakings must be authorized by the court, on the advice of the tutor.

SECTION II

EMANCIPATION BY MARRIAGE

107. A minor is emancipated, *pleno jure*, by marriage.

Emancipation by marriage renders the minor capable of performing every civil act as if he were of full age.

TITLE FIVE

TUTORSHIP OF MINORS

CHAPTER I

TUTORSHIP

108. Tutorship is established in the interest of the minor and is intended to secure him in the exercise of his rights and ensure the management of his *patrimonium*.

109. Tutorship to minors is legal or dative.

Tutorship conferred by the father and mother or by the court is dative.

110. Tutorship is a personal office accessible to every person of full age who is fully capable of exercising his civil rights.

111. Tutorship does not pass to the heirs of the tutor, but if they are of full age they are bound to continue their ancestor's administration until a new tutor is appointed.

112. Fathers and mothers, other persons having parental authority and the director of youth protection hold the office of tutor gratuitously.

113. No person may be compelled to accept the office of dative tutorship except, failing any other person, the director of youth protection or, for tutorship to the property, the public curator.

114. A dative tutor may receive remuneration in the amount fixed by the court or by the father or mother who appoints him or, again, by the liquidator of the succession of either of them, if so authorized. The expenses of the tutorship and the revenue from the property to be administered are taken into account.

115. Except where divided, tutorship extends to the person and property of the minor.

116. In no case may more than one tutor to the person be appointed, but several tutors to the property may be appointed.

117. Where several tutors to the property are appointed, each of them is accountable for the management of the property entrusted to him and represents the minor, even before the courts, with regard to that property.

118. A legal person specializing in the administration of the property of others may act as tutor to the property.

119. The tutor to the property must render an annual account of his administration to the tutor to the person.

120. Whenever a minor has any interest to discuss judicially with his tutor, a tutor *ad hoc* is appointed to him.

121. In the case of difficulties relating to the exercise of the responsibilities of tutorship between the father and mother or between the tutor to the person and the person having parental authority, any of them may refer the matter to the court.

The court decides in the interest of the minor after fostering the conciliation of the parties and, if need be, obtaining the opinion of the tutorship council.

122. Tutorship is based at the domicile of the tutor. He must give notice of it to the court of his domicile.

CHAPTER II

LEGAL TUTORSHIP

123. The father and mother of a minor child, if they are of full age or emancipated, are tutors to their child, *pleno jure*.

The father and mother are also tutors to a child conceived but yet unborn and are responsible for acting on his behalf in all cases where his pecuniary interests require it.

124. The father and mother exercise tutorship together unless one parent be deceased or unable to express his will or to do so in due time.

125. Either parent may give the other the mandate to represent him in exercising tutorship.

The mandate is presumed with regard to third persons in good faith.

126. Where custody of the child is decided by the court, the parent who is awarded custody of the minor acts as tutor, unless the court decides otherwise.

127. Total deprivation of parental authority entails loss of tutorship; partial deprivation entails the loss of tutorship only if so decided by the court.

128. A father or mother deprived of tutorship as a result of having been totally or partially deprived of parental authority may be reinstated as tutor once his or her parental authority is restored, even if dative tutorship has already begun.

129. The director of youth protection having jurisdiction in the child's place of residence becomes *ex officio* the legal tutor to the child where the court declares the father and mother of the minor totally deprived of parental authority, without appointing another tutor.

130. The director of youth protection is also, until the adoption judgment, legal tutor to a child declared eligible for adoption or who is entrusted to him following a general consent to adoption, unless another tutor is appointed by a court decision.

CHAPTER III

DATIVE TUTORSHIP

131. A father or a mother may appoint a tutor to his or her minor child in a will or by filing a declaration to that effect in the court of his or her domicile.

132. The right to appoint a tutor belongs solely to the last surviving parent if he has retained legal tutorship to the day of his death.

133. Where both parents die simultaneously, each having designated a different person as tutor, and both persons accept, the tutorship council shall designate one of them as tutor.

134. Except where the designation is contested, the tutor appointed by the parents assumes office upon accepting it, after the death of the last surviving parent.

If the tutor appointed by the parents has not refused the tutorship within thirty days after becoming aware of his appointment, he is presumed to have accepted.

135. If the tutor appointed by the parents accepts the tutorship, he must so notify the liquidator of the succession.

He must also file a notice to that effect in the court of his domicile.

136. Refusal to accept the tutorship is made in writing and notified to the liquidator of the succession or, failing him, to the public curator.

137. Where the person appointed by either parent refuses the office of tutor and the parent has designated a substitute, the person who refuses must so notify the substitute.

The person may, however, retract his refusal before the substitute accepts the office or an application to institute tutorship is made to the court.

138. Tutorship is conferred by the court where it is necessary to appoint or replace a tutor or to appoint a tutor *ad hoc* or a tutor to the property or where the designation of a tutor by the father and mother is contested.

It is conferred on the advice of the tutorship council, unless it is applied for by the director of youth protection.

139. The minor, the person having parental authority and persons closely related to the minor by blood or marriage or any other interested person may apply to the court for the institution of tutorship and, if necessary, propose a person suited to and who agrees to act as tutor.

140. The director of youth protection may also apply for the institution of tutorship to an orphan who is a minor and who has no tutor, or to a child whose father and mother or tutor fail to fulfill the obligations of maintenance and education, or to a child whose interests require, in the circumstances, that he not be allowed to return to his father or mother.

141. A judgment appointing a tutor has effect upon being filed in the office of the court.

CHAPTER IV

ADMINISTRATION OF TUTORS

142. Fathers and mothers are bound to administer the property of their minor child with the care of a prudent and diligent person administering his own property.

143. Fathers and mothers have the obligations of dative tutors in respect of the administration of property devolved on a minor by gift, will, transaction, judgment or otherwise if the annual revenues from the property exceed the amounts necessary every year for the maintenance and education of the minor, or if so ordered by the court on the motion of an interested person.

They have the same obligations in respect of the administration of that part of the proceeds of the minor's work that he does not administer himself.

144. All property given or bequeathed to a minor on condition that it be administered by a third person is exempt from the administration of a legal or dative tutor.

If the deed does not indicate the particular mode of administration of the property, the person administering it has the rights and obligations of a tutor to the property.

145. In respect of the property of the minor, the dative tutor acts as an administrator entrusted with simple administration.

146. For any act beyond simple administration, the tutor must be specially authorized by the tutorship council.

To borrow on the security of real property, to alienate an important family property, an immoveable or an enterprise or to demand the definitive partition of the immoveables of a minor in undivided ownership, the tutor must be authorized by the court, which shall obtain the opinion of the tutorship council.

147. A tutor may accept alone any liberality in favour of his pupil. In no case, however, may he accept any gift or any legacy involving an obligation without obtaining the authorization of the tutorship council.

148. No tutor may transact or continue an appeal except in accordance with the instructions of the tutorship council.

149. No tutor may alienate property worth over \$6 000 without obtaining an expert's appraisal, except in the case of securities quoted and traded on an exchange.

Copy of the appraisal must be attached to the annual management account.

Juridical acts which are related according to their nature, their object or the time they are performed constitute one and the same act.

150. The clerk of the court shall immediately give notice to the tutorship council and to the public curator of any judgment relating to the interests of the *patrimonium* of a minor rendered following an action to which the tutor is a party in that capacity.

151. Income of a minor derived from his property or other sources and proceeds from his work are allocated to his maintenance and education; such sums are added to the contribution of the parents.

Surpluses are allocated, next, to the conservation of the minor's property and to his obligations of support. The remainder is capitalized for him.

152. A tutor shall deduct from the property he administers all amounts necessary to discharge the responsibilities of the tutorship and, in particular, to provide for the maintenance and education of the minor.

153. The tutor to the person and the tutor to the property shall agree on the amounts necessary each year to discharge the obligations of the tutorship.

If they cannot agree on the amount or on its payment, the tutorship council or, failing that, the court decides.

154. Where the work of the minor yields considerable revenues or proceeds, the tutorship council shall decide what amount the minor may retain under his administration for his ordinary and habitual needs; it shall take into account the general conditions of maintenance and education of the minor, as well as his obligations of support and those of his parents.

155. Where tutorship is exercised by the director of youth protection or by a person he recommends, he is bound to discharge only the obligations of fathers and mothers for the administration of the minor's property.

If the annual revenue from the property exceeds the amount necessary every year for the education and maintenance of the minor, or if so ordered by the court, tutorship to the property is conferred on the public curator, who has the rights and obligations of a dative tutor, subject to legislative provisions relating to public curatorship.

156. Where tutorship is exercised by the director of youth protection and the minor is ordinarily kept in the care of a health or social services establishment by reason of mental or physical incapacity, custody is exercised by the establishment then exercising, through its authorized representative, the duties and powers of the person having parental authority.

CHAPTER V

TUTORSHIP COUNCIL

SECTION I

CONSTITUTION OF THE COUNCIL

157. The court or any interested person may initiate the constitution of a tutorship council by convening a meeting of relatives and friends before the prothonotary of the place where the minor has his domicile or residence, or before a notary.

Not fewer than seven persons must attend the meeting and, whenever possible, the paternal and maternal lines must be represented.

158. The father and mother of the minor, if they have parental authority, his brothers and sisters of full age and his other ascendants may be members of the tutorship council and must be called to the meeting.

The other relatives by blood or relatives by marriage of the minor and his friends, if of full age, may be called to the meeting and be members of the council.

159. Persons who must be called are always entitled to present themselves at the first meeting and give their opinion even if they were not called.

160. Taking into consideration the family situation of the minor, the importance of his *patrimonium* and the number of persons called, the tutorship council is composed of three or five persons.

161. The persons called shall decide the number of persons who are to compose the council; they appoint the members of the council and, if possible, two substitutes, giving preference in these appointments to representation of the maternal and paternal lines.

They shall also fix the seat of the council and appoint, from among the members of the council or not, a secretary responsible for taking and keeping the minutes of the deliberations of the council; they shall fix the secretary's remuneration if necessary.

The deliberations are decided by a majority vote.

162. In no case may the tutor be a member of the tutorship council, but he must be invited to every meeting to give his opinion.

163. No person may be compelled to accept membership on the council and any one who has agreed to become a member may be released at all times by the other members, provided it is not done at an inopportune time.

Membership on a tutorship council is a personal charge that entails no remuneration.

164. The council shall meet once a year; it does not deliberate validly unless a majority of its members attend the meeting.

If circumstances require, meetings of the council may be held by means of a telephone conference.

165. Vacancies on the council are filled by the members by first selecting a designated substitute in the line where the vacancy occurred. If there is no substitute, they shall fill the vacancy with a relative by blood or by marriage in the same line or, otherwise, with a relative by marriage or a friend.

SECTION II

RIGHTS AND OBLIGATIONS OF THE COUNCIL

166. The role of a tutorship council is to supervise dative tutorship, except that of the director of youth protection or of the public curator.

The council shall give the opinions or advice required by law and, where such is the case, the required authorizations.

167. Whenever the rules of administration of the property of others provide that the beneficiary must or may give his consent to an act, obtain an opinion or advice or be consulted, the council shall act on his behalf.

168. The council must cause a tutor *ad hoc* to be appointed whenever the person under protection has any interest to discuss judicially with his tutor.

169. The council receives the annual management account from the tutor. It may examine all documents and vouchers attached to the account and obtain copy of them.

170. Any interested person may, for a serious cause, apply to the court within ten days, to have a decision of the council reviewed or for leave to constitute a new council.

171. The tutor may, if the need arises, convene the council or, if the council cannot meet, apply to the court for leave to act alone.

172. The council is responsible for seeing that the records of the tutorship are preserved at the seat of the council and, at the end of the tutorship, for remitting them to the minor or his heirs.

DIVISION III

SUBSTITUTE FOR THE COUNCIL

173. The court may order that the functions of a tutorship council be exercised by a substitute when a council cannot be constituted by reason of the wide dispersal of the family members or a major impediment, or when it is inopportune to do so because of the family situation of the minor.

174. The court may designate a judge, a prothonotary, the director of youth protection or the public curator to act as a substitute.

The court may then restrict the rights and obligations of the council in respect of the tutorship administration.

CHAPTER VI

SUPERVISION OF TUTORSHIPS

SECTION I

INVENTORY

175. Upon the institution of dative tutorship, the tutor must, within two months, make an inventory of the property to be administered.

176. Any property which devolves to a minor after tutorship is instituted must also be the subject of an inventory.

177. Fathers and mothers are exempt from making an inventory except with regard to property contemplated in article 143.

Similarly, a tutor who continues the administration of another tutor after the rendering of accounts is exempt from making an inventory.

178. Copy of the inventory is sent to the public curator and, where such is the case, to the tutorship council.

SECTION II

SECURITY

179. After drawing up the inventory, the tutor must, if the value of the property to be administered exceeds \$10 000, furnish security of the kind, in the amount and for the object determined by the tutorship council, and within the time fixed by the council.

Fathers and mothers are not subject to that requirement unless the value of the child's property contemplated in article 143 exceeds \$25 000.

180. The tutorship is responsible for the costs of the security.

181. The tutor must, without delay, furnish proof of the security to the tutorship council and to the public curator.

182. A legal person specializing in the administration of the property of others is exempt from furnishing security when acting as tutor to the property.

183. Where it is advisable to withdraw the obligation to furnish security, the member of the tutorship council authorized for that purpose by the council, or the minor, once he attains full age, may do so or apply for its cancellation.

SECTION III

REPORTS AND ACCOUNTS

184. At the end of his administration the tutor is accountable for it to the minor or to the liquidator of his succession or, as the case may be, to the new tutor. He must send a copy of his final account to the tutorship council and to the public curator.

185. The tutor shall send the annual account of his management to the minor if he has attained fourteen years of age, to the tutorship council and to the public curator.

186. Fathers and mothers are exempt from rendering accounts except in respect of property contemplated in article 143.

187. The tutor owes interest on the balance from the final closing of the account or from his being summoned to file his account; the minor owes interest only from the summons.

188. Every settlement between the tutor and the minor relating to the administration or the account is null unless it is preceded by a detailed rendering of accounts and the delivery of the related vouchers.

189. The public curator shall examine the annual account of management and the final account of the tutor.

He may require any document and any explanation concerning the accounts.

CHAPTER VII

END OF TUTORSHIP

190. Tutorship ends when the minor attains the age of majority, marries or dies.

191. The duties of a tutor cease at the end of the tutorship, when he is replaced or on his death.

192. A tutor may, for a serious reason, apply to the court to be relieved of his duties, provided his application is not made at an inopportune time and notice of it has been sent to the tutorship council.

193. The tutorship council or, in case of emergency, one of its members must apply for the replacement of a tutor who is unable to perform his duties, fails to respect the rights of the minor or neglects his obligations. A tutor to the person must act in the same manner with regard to a tutor to the property.

Any interested person, including the public curator, may also, for the same reasons, apply for the replacement of the tutor.

194. Where tutorship is exercised by the director of youth protection, by a person he recommends or by the public curator, an

interested person may apply for the appointment of another tutor without having to justify if for any reason but the interest of the person.

195. During proceedings, the tutor continues to exercise his duties unless the court decides otherwise and appoints a provisional administrator.

196. A judgment terminating a tutorship must contain the grounds on which it is founded and appoint the new tutor.

TITLE SIX

PROTECTIVE SUPERVISION OF PERSONS OF FULL AGE

CHAPTER I

GENERAL PROVISIONS

197. Protective supervision of a person of full age is established in his interest and is intended to secure him in the exercise of his rights and ensure the management of his *patrimonium*.

Any incapacity resulting from protective supervision is established solely in favour of the person under protection.

198. Every decision concerning a person of full age who is under protection must be in his interest, respect his rights and safeguard his autonomy.

199. A tutor or curator shall be appointed to represent, or an adviser to assist, a person of full age who is unable to express free and enlightened consent or to take care of himself or of his property by reason, in particular, of illness, disability or debility due to age which impairs his mental or physical faculties.

A tutor or an adviser may also be appointed to a prodigal.

200. The rules pertaining to tutorship to minors apply to curatorship and tutorship to persons of full age except where inconsistent.

Where it is advisable to constitute a tutorship council, the spouse of the person of full age, his ascendants, and his brothers and sisters of full age must be called to the constituting meeting.

201. The public curator exercises *ex officio* curatorship or tutorship to a person of full age who is under protection if he is not already provided with a curator or a tutor.

202. Even if appointed curator, the public curator has only the simple administration of the property of a person of full age who is under protection.

The public curator does not have custody of the person.

203. Custody of a person of full age who is under protection is exercised by the person designated by the health or social services establishment where he is kept in extended care, unless he has a curator or tutor other than the public curator.

The designated person has the power of a curator to give consent to an examination, treatment or operation necessitated by the state of health of the person under protection.

CHAPTER II

INSTITUTION OF PROTECTIVE SUPERVISION

204. The institution of protective supervision of a person of full age is awarded by the court of the domicile of the person on an application.

205. The person of full age himself, his spouse, his close relatives by blood or by marriage, his attending physician, any person showing a special interest in the person or the public curator may apply for the institution of protective supervision.

206. The institution of protective supervision may be applied for in respect of a person in the year preceding his attaining the age of majority.

The judgment takes effect only from the age of majority.

207. Where a person of full age who is in the care of a health or social services establishment is unable to form or express his consent for any of the reasons which may warrant the institution of protective supervision, the director general must, without delay, attest in a certificate the degree of capacity of the person to take care of himself or to administer his property.

The certificate is drawn up on the written recommendation of the physician who examined the person of full age and notice of it must be given without delay to the person, his spouse, his known close relatives, the public curator and, where such is the case, the attorney of the person of full age.

208. On receiving the certificate, the public curator must, within the following fifteen days, apply to the court for the institution of protective supervision of the person of full age. He is released from that obligation if the person is already under protection or if an application for the institution of protective supervision has already been made.

From reception of the certificate, the public curator exercises *ex officio* the duties and powers of the curator until the court renders a decision.

209. Where, pursuant to article 28, a notice of the findings of a psychiatric examination institutes an application to institute protective supervision, the general manager of the establishment where the examination took place shall inform the person of full age, his spouse, his known close relatives, the public curator and, where such is the case, the attorney of the person.

The persons referred to may intervene in the application. If they fail to intervene, the court may, nevertheless, decide on the institution of protective supervision.

210. During proceedings and provisionally, the court may, even *ex officio*, decide on the custody of the person of full age and appoint an administrator responsible for the simple administration of the property of the person to be protected.

211. Where the court is called upon to establish protective supervision, it must take into consideration, in addition to the opinion of the tutorship council, the medical opinions and proofs, and the degree of autonomy of the person to be protected.

The court must, so far as possible, give to the person to be protected an opportunity to be heard.

212. The court instituting protective supervision must, so far as possible, consult with the person of full age and obtain his opinion on the person who is to be responsible for representing or assisting him.

213. Any judgment instituting protective supervision may be reviewed at any time if the cause has ceased or the physical or mental condition of the person has changed.

The court may provide for the review of the judgment on the date it indicates.

CHAPTER III

CURATORSHIP TO PERSONS OF FULL AGE

214. The court institutes curatorship and appoints a curator to the person of full age if it is established that his incapacity is permanent and total.

215. The curator has the full administration of the property of the person under protection and the only rules which apply to his administration are the rules of administration of the property of others. Where those rules prescribe that the beneficiary must or may consent to an act, receive a notice or be consulted, the tutorship council shall act for the person of full age.

216. Every act performed alone by a person of full age under curatorship may be declared null or the obligations resulting from it reduced without it being necessary to prove damage.

217. Acts performed before the curatorship may be annulled or the obligations resulting from them reduced if the incapacity was apparent or known at the time the acts were performed and if the person of full age suffers damage.

CHAPTER IV

TUTORSHIP TO PERSONS OF FULL AGE

218. The court shall institute a tutorship and appoint a tutor to the person of full age if it is established that his incapacity is not permanent or total.

219. The tutor has the simple administration of the property of the person of full age. He exercises his administration in the same manner as the tutor to the minor, unless the court decides otherwise.

220. The capacity of exercise of the person of full age under tutorship is that of a minor. However, the court may, on the institution of the tutorship or subsequently, increase or limit that capacity on the advice of experts and of the tutorship council. The court shall then indicate the acts which the person may or may not perform alone.

221. Acts performed before the tutorship may be annulled or the obligations resulting from them reduced if the incapacity was apparent or known at the time the acts were performed and if the person of full age suffers prejudice.

CHAPTER V

ADVISER TO THE PERSON OF FULL AGE

222. The court shall appoint an adviser to a person of full age who, although generally and habitually capable of giving his consent and administering his property, is incapable of doing so for certain acts or for a certain time.

223. The adviser does not have the administration of the property of the person under protection. He must, however, intervene in the acts for which he is bound to give his assistance.

224. The court shall indicate the acts for which the adviser's assistance is required, on the advice of the tutorship council.

If not specified by the court, a person of full age provided with an adviser must be assisted by him for every act beyond the capacity of an emancipated minor.

225. Acts performed alone by a person of full age whereas the intervention of his adviser was required may be cancelled or the obligations resulting from them reduced if the acts cause him damage.

CHAPTER VI

END OF PROTECTIVE SUPERVISION

226. Protective supervision ceases by a judgment of removal or by the death of the person of full age under protection.

227. A person of full age who is under protection may at any time after the judgment of removal and, where such is the case, after the rendering of accounts by the tutor or curator, confirm any act that may otherwise be annulled.

228. A vacancy in the office of curator, tutor or adviser does not terminate protective supervision.

The tutorship council must, on the occurrence of the vacancy, bring about the appointment of a new curator, tutor or adviser.

TITLE SEVEN

ABSENCE AND DEATH

CHAPTER I

ABSENCE

229. An absentee is a person who, while he had his domicile in Québec, ceased to appear there without advising anyone and of whom it is unknown whether he is still alive.

He is presumed to be alive for seven years after his disappearance, unless he is proved to have died before then.

230. A tutor may be appointed to an absentee who has rights to be exercised or property to be administered, if the absentee did not designate an administrator to his property or if the administrator is unknown or is unable or refuses to act.

231. Any interested person, including the public curator or a creditor of the absentee, may apply for the institution of tutorship.

Tutorship is awarded by the court on the advice of the tutorship council.

232. The rules respecting tutorship to minors apply to tutorship to absentees, except where inconsistent.

233. The spouse of the absentee may apply for the dissolution of the matrimonial regime after an absence of two years.

234. In case of dissolution of a matrimonial regime, the tutor must obtain leave of the court to grant or deny the partition of the acquests of the spouse of the absentee.

235. Tutorship to an absentee is brought to an end by his return, by his sending a mandate to any person, by declaratory judgment of death or by proof of his death.

236. In case of superior force, a tutor may also be appointed, as to an absentee, to a person prevented from appearing at his domicile, and from appointing an administrator to his property.

CHAPTER II

JUDICIAL DECLARATION OF DEATH

SECTION I

DECLARATORY JUDGMENT OF DEATH

237. When a person has been absent for seven years from his disappearance, any interested person may request the court to attest to the duration of his absence and obtain a declaratory judgment of death.

238. A declaratory judgment of death may be pronounced even before the lapse of seven years when the death of a person domiciled in Québec or presumed to have died there may be held to be certain although it is impossible to draw up an attestation of death.

239. A declaratory judgment of death gives the surname, given name and sex of the person presumed dead, the place and date of his birth, the place of his last known domicile, the surname and given name of his father, of his mother and of his spouse, and the date, time and place of his death, if known.

240. The date at the end of seven years from the disappearance or the last news of the absentee is fixed as the date of death; however, if his death is declared before then, the date of death is fixed in accordance with the presumptions drawn from the circumstances.

241. In the absence of other proof, the place of death is fixed at the place where the person was seen for the last time.

SECTION II

EFFECTS OF THE JUDGMENT

242. A declaratory judgment of death produces the same effects as death. Thus, it terminates the marriage of the absentee or of the person whose death is held to be certain, dissolves his matrimonial regime and opens his succession.

243. If the date of death is proved to precede that fixed by the judicial declaration of death, the dissolution of the matrimonial regime is retroactive to the true date of death, unless the court has made the effects of the dissolution retroactive to an earlier date through the application of article 498.

244. If the date of death is proved after a declaratory judgment of death, the succession opens on that date.

The heirs apparent in possession of the property of the succession must restore, to the true heirs qualified to inherit at that time, the property, in the condition in which it is, the remainder of the price of any property which has been alienated, or any property acquired with the price.

Every obligation of the deceased discharged by the heirs apparent otherwise than out of property of the succession shall be reimbursed by the true heirs.

245. In no case may a judicial declaration of death be set up against an insurer who has insured the life of the deceased until the seventh year after the date of death fixed by the declaration, unless he has been impleaded.

CHAPTER III

RETURN

246. When a person declared dead by judgment returns, the effects of the judgment cease, except in respect of his marriage and matrimonial regime.

247. A person who returns must apply to the court to have the registers of civil status rectified.

If he fails to apply, any interested person may make the application at the expense of the person who has returned.

248. Subject to the rights of third persons, a person who returns or, failing him, any other interested person may apply for the cancellation or rectification of the entries or registrations made pursuant to the declaratory judgment of death and nullified by his return, as if they had been made without any right.

249. A person who returns recovers his property in the condition in which it is, the balance of the price of any property which has been alienated or any property acquired with the price. He shall reimburse those who, in good faith, were in possession of his property and who discharged his obligations otherwise than with his property.

250. Any payment made to the heirs of a person who returns following a declaratory judgment of death but before the entries and registrations are cancelled is valid and constitutes a valid discharge.

251. An heir apparent who learns that the person declared dead by judgment is still alive retains possession of the property and acquires the fruits of the property as long as the person does not resume the administration of his property and the exercise of his rights.

CHAPTER IV

PROOF OF DEATH

252. Proof of death is established by an act of death, except in cases where the law authorizes another mode of proof.

TITLE EIGHT

CIVIL STATUS

CHAPTER I

THE OFFICER OF CIVIL STATUS

253. The registrar of civil status is the sole officer of civil status.

He is responsible for drawing up and altering acts of civil status, and for the keeping and custody of the register of civil status; he shall issue copies or certificates of the acts in his possession.

CHAPTER II

THE REGISTER OF CIVIL STATUS

254. The register of civil status comprises all the acts of civil status.

255. The register of civil status shall be kept in duplicate; one duplicate shall be in writing and the other in a computerized system.

The duplicates must be kept in different places, and one may always be used to reconstitute the other.

256. If there is any variance between the duplicates of the register, that in writing prevails.

257. An abridged version of the register of civil status may be kept, retaining only such information from the acts of civil status as may appear on a certificate of civil status.

CHAPTER III

ACTS OF CIVIL STATUS

SECTION I

GENERAL PROVISIONS

258. The only acts of civil status are acts of birth, acts of marriage and acts of death.

They contain only what is required by law, and are proof of all the facts recorded in them.

259. The registrar of civil status shall draw up the acts of civil status from the attestations and declarations he receives regarding births, marriages and deaths occurring in Québec.

260. The registrar of civil status shall immediately sign and date each declaration he receives, affix a file number to it and enter it in the register of civil status.

The declaration then constitutes an act of civil status.

261. Every attestation and declaration must indicate the date and the surname, given name, capacity and domicile of the maker, and bear his signature.

SECTION II

ACTS OF BIRTH

262. The accoucheur shall prepare an attestation of birth.

The attestation must give the place, date and time of birth, the sex of the child, and the surname, given name and domicile of the mother of the child.

263. The accoucheur shall transmit the original of the attestation to those who must declare the birth and, if the declaration cannot be transmitted immediately with the attestation, he shall without delay transmit a copy of the attestation to the registrar of civil status.

264. The declaration of birth of the child must be made by the father and mother to the registrar of civil status within thirty days, before a witness.

265. Only the father or mother may declare the filiation of the child. No other person may declare the filiation unless he is authorized to do so by one of the parents.

266. A declaration of birth must give the surname, given name and sex of the child, the place, date and time of his birth, the surname, given name and domicile of the father, of the mother, and of the witness, and the degree of relationship between the declarant and the child.

The declarant must append the attestation of birth to his declaration.

267. Any person who gives shelter to or takes custody of a newborn child whose father and mother are unknown or prevented from acting must declare the birth to the registrar of civil status within thirty days.

The declaration must give the sex of the child, and, if known, his surname and given name and the place, date and time of birth.

The declarant must also append to his declaration a note relating the circumstances in which he came to give shelter to or take custody of the child and indicating, if known, the names of the father and mother.

268. Where the particulars are unknown, the registrar of civil status shall fix the place, date and time of birth on the basis of the attestation or a medical report and the presumptions that may be drawn from the circumstances; where such is the case, he shall mention the absence of filiation and assign a name to the child.

SECTION III

ACTS OF MARRIAGE

269. The person who solemnizes a marriage shall declare it to the registrar of civil status within thirty days of the solemnization.

270. The declaration of marriage must give the surname, given name and domicile of each spouse, their places and dates of birth, the date of their marriage, and the surnames and given names of their father and mother and of the witnesses.

The declaration must indicate the authorizations obtained, if one of the spouses is a minor, or the fact of a dispensation from publication.

271. The declaration must be signed by the officiant, the spouses and the witnesses.

SECTION IV

ACTS OF DEATH

272. A physician who establishes that a death has occurred shall prepare an attestation of death.

He shall remit the original of the attestation to the person who must declare the death and, if the declaration cannot be transmitted immediately with the attestation, the physician shall transmit a copy of the attestation to the registrar of civil status without delay.

If it is impossible to have a death attested by a physician within a reasonable time, the attestation may be made by a coroner or two peace officers.

273. The attestation must give the surname, given name and sex of the deceased and the place, date and time of death.

274. The declaration of death is made to the registrar of civil status within thirty days of the attestation, by the spouse of the deceased, a close relative or a person related by marriage or, failing them, any other person able to identify the deceased.

275. The declaration of death must give the surname, given name and sex of the deceased, the place, date and time of his birth, the place of his last domicile, the place, date and time of death, the place and date of burial or cremation, and the surnames and given names of his father and mother and, as the case may be, of his spouse.

The declarant shall append the attestation of death to his declaration.

276. If the date and time of death are unknown, the registrar of civil status shall fix them on the basis of the report of the coroner and in accordance with the presumptions drawn from the circumstances.

If the place of death is unknown, it is presumed to be the place where the body was discovered.

277. If the deceased cannot be identified, the attestation must give a description of him and an account of the circumstances surrounding the discovery of the body.

CHAPTER IV

ALTERATION OF THE REGISTER OF CIVIL STATUS

SECTION I

GENERAL PROVISIONS

278. Where a judgment changes the name of a person, pronounces his adoption, alters his filiation or any indication in one of the acts of civil status, the clerk of the court where judgment has been rendered shall report it to the registrar of civil status as soon as it acquires status as *res judicata*.

The same applies to declaratory judgments of death, judgments to reconstitute or replace an act of civil status and judgments of divorce and nullity of marriage.

279. If any judgment contemplated in article 278 refers to an act of civil status entered in a register kept by other depositaries, the registrar of civil status shall require them to alter the act accordingly.

SECTION II

PREPARATION OF ACTS

280. Where a birth, marriage or death which occurred in Québec has not been declared, the registrar of civil status shall make a summary investigation and draw up the act of civil status on the basis of the information he obtains.

However, if the event occurred more than one year previously, no act may be drawn up without the authorization of the court, on the application of the registrar or of any other interested person.

281. The registrar of civil status shall draw up a new act of civil status immediately upon receiving notification of a judgment changing the name of a person, pronouncing his adoption or otherwise altering his filiation or any other essential particular in the act, or immediately upon authorizing a change of name or of designation of sex.

282. The new act replaces the original act; it must repeat all the statements and marginal notations that were not affected by the alteration.

The alteration must also be noted in the original act replaced by the new act.

283. When the registrar of civil status receives notification of a declaratory judgment of death, he shall draw up an act of death, indicating the particulars in accordance with the judicial declaration.

He shall make a notation in the margin of the act of the date of the judgment, the court that rendered it and the number of the court record.

284. The registrar of civil status, upon receiving an act of civil status made outside Québec but relating to the civil status of a person domiciled in Québec, particularly in the matter of adoption, shall draw up an act of civil status and enter it in the register.

285. The registrar of civil status, upon receiving an act made outside Québec which alters or replaces an act of civil status entered in the register, shall draw up a new act or make a notation in the margin of the act in his keeping.

286. If an act made outside Québec has been lost or destroyed or if a copy of it cannot be obtained, the registrar of civil status may nevertheless, with leave of the court, draw up an act of civil status or make a notation in the margin.

287. Where the authenticity or validity of an act made outside Québec is uncertain, the registrar of civil status must refuse to draw up an act of civil status or to make a notation in the margin of an act unless the authenticity or validity of the document has been recognized by a court of Québec.

288. Every act made outside Québec must be accompanied with a translation collated in Québec if it is written in a language other than English or French.

289. The cost of preparing an act of civil status is charged to the person who has failed to report the event; it is charged to the person who applies for it if it is made on the basis of an act from outside Québec.

SECTION III

MARGINAL NOTATIONS

290. The registrar of civil status, except in cases where he must prepare a new act, must, upon notification of a judgment maintaining an application respecting filiation or declaring the nullity of a marriage or granting divorce, shall make a notation in the margin of the act of birth or the act of marriage.

291. The registrar of civil status shall similarly make a notation in the margin of acts of civil status altered by a decision to authorize a change of name if only the given name is changed or the particular does not otherwise affect the name or the indication of sex of the person contemplated in the act.

292. When the registrar of civil status draws up an act of marriage, he shall make a notation of it in the margin of the act of birth; he shall also, when he draws up an act of death, make a notation of it in the act of birth and in the act of marriage.

293. When the registrar of civil status makes a notation on an act as the result of a judgment, he shall enter in the margin of the act the date of the judgment, the court that rendered it and the number of the court record.

In any other case, he shall make the necessary notations in the margin to allow retrieval of the altering act.

SECTION IV

RECTIFICATION OF AN ACT

294. If a declaration is incomplete or contrary to the attestation, the registrar of civil status, except as regards filiation, shall rectify the declaration and draw up the act on the basis of the information he obtains.

295. Within six months after the declaration of birth, the registrar of civil status, on an application, may change the surname and given name assigned to the child if they are not consistent with the choice of his father and mother.

Only the father or mother may make the application, after notifying the other parent.

296. The registrar of civil status shall rectify clerical errors in any act.

297. Except in the case of clerical errors, no rectification may be made to an act except by order of the court, by judgment.

298. The court, at the request of any interested person, may revise a decision of the registrar relating to the rectification of an act.

SECTION V

RECONSTITUTION OF AN ACT OR THE REGISTER

299. The registrar of civil status shall reconstitute, on the basis of the information he obtains, any act which has been lost or destroyed, or of which a copy cannot be obtained.

300. Where the whole or part of one of the duplicates of the register is lost, the registrar of civil status shall reconstitute it, on the basis of the other duplicate, the abridged version or any other information.

301. The acts so reconstituted are valid only if the court has ascertained that the proofs are genuine and that the procedure followed was in order. They are authentic.

CHAPTER V

KEEPING AND PUBLICITY OF THE REGISTER OF CIVIL STATUS

302. The register of civil status is publicized by the issue of copies of acts or certificates bearing the vidimus of the registrar of civil status and the date of issue.

303. The copy of any act of civil status must be in full and include all the marginal notations.

304. A certificate of civil status sets forth the surname and given name of the person concerned, his sex, the place and date and time of his birth, and, where such is the case, the place and date of his death.

305. The registrar of civil status shall issue copies of any act to the persons mentioned in the act or any person justifying his interest.

He shall issue a certificate to every person who applies for it.

306. When an act has been replaced, only the persons mentioned in the act may obtain a copy of the original act. However, in cases of adoption, no copy of the original act is ever issued except with leave of the court.

307. In Cree, Inuit or Naskapi communities, the local registry officer appointed pursuant to the Act respecting Cree, Inuit and Naskapi Native persons is authorized to receive the declarations for the registrar of civil status, to transmit them to him and to issue, for him, copies of acts of civil status.

308. Copies of acts of civil status and certificates issued under articles 306 to 307 are authentic.

309. To examine the register of civil status, the authorization of the registrar of civil status must be obtained.

The registrar may allow the register to be examined for purposes of research. He shall in such cases determine the conditions required to protect the confidentiality of the information in the register.

310. The Minister of Justice shall determine, by order, the persons to whom the registrar of civil status may delegate his power to sign documents, and the manner in which it is to be done.

311. The Government shall fix, by order, the duties payable for the issue of copies or certificates and the charge for examining the register.

312. The orders shall be published in the *Gazette officielle du Québec*.

CHAPTER VI

FORMER REGISTERS OF CIVIL STATUS

313. The officers of civil status and their substitutes who, prior to (*insert here the date of the coming into force of the new system*), were responsible under the law for the keeping and custody of the registers of civil status and the issue of copies or abstracts of the acts of civil status, shall continue to exercise those functions in respect of acts already drawn up at that date and the registers kept in accordance with former articles 42 to 53a of the Civil Code of Lower Canada.

They shall also continue to alter or rectify such acts in accordance with the judgments notified to them.

However, they are prohibited from drawing up or reconstituting any act.

TITLE NINE

LEGAL PERSONS

CHAPTER ONE

LEGAL PERSONALITY

314. Legal persons are constituted in the forms provided by law, and sometimes directly by law.

Legal persons are public or private.

315. Public legal persons are governed by the Acts by which they are constituted or which are applicable to them, as well as by this title where the provisions of such Acts require to be complemented.

They are subject to the civil law in their relations with other persons.

316. Private legal persons assume the forms recognized by law as conferring legal personality.

They are divided into associations and partnerships or companies, and generally comprise several members.

317. Private legal persons possess juridical personality from their registration in the legal persons registry. Public legal persons possess juridical personality from the time provided by law or, failing that, from their registration in the registry.

318. Legal persons are distinct from their members. Their acts bind none but themselves, except as provided by law.

319. Every legal person has a patrimonium. It also has *extra-patrimonium* rights and obligations peculiar to its nature.

320. Legal persons constituted under the Acts of Québec have full enjoyment of civil rights in Québec and outside Québec.

321. Legal persons have full capacity to exercise their rights to the extent necessary to attain their objects, and the provisions respecting the exercise of civil rights by human persons are applicable to them, so far as can be.

Their only disabilities are those resulting from their nature, their objects or the law or, as the case may be, their constituting document.

322. The object of an association is to meet the needs of its members or of third persons through the combination of property, knowledge or activities. Its principal object is neither profit-making nor the carrying on of a business. It does not share profits among its members.

323. The object of a partnership or company is to make and share a profit; its object may also be to benefit from the savings that may result from the combination of property, knowledge and activities or to meet common economic and social needs by carrying on a business.

324. Associations and partnerships or companies are governed by this Code and by the Acts applicable to their particular kind.

325. No legal person may be tutor or curator to a person, or be a witness.

A legal person may, however, to the extent provided by law, be a tutor or a curator to property, a liquidator of a succession, a sequestrator or a trustee.

326. Every legal person has a name which is given to it at its constitution, and under which it exercises its rights and executes its obligations.

327. The domicile of a legal person is at the place of its head office.

328. Legal persons act through their organs. Unless otherwise provided by law or the articles, the organs are, more particularly, the board of directors and the general meeting of the members.

329. The functioning, the administration of the *patrimonium* and the activities of a legal person are regulated by law or by its articles, which comprise the constituting document and the by-laws.

330. The directors of a legal person represent and obligate the legal person to the extent of the powers vested in them by law or the articles.

They act as administrators to the property of another entrusted with full administration.

331. In no case may a legal person set up legal personality against a third person in good faith once it uses it to dissemble, among other things, the abuse of a right or a contravention of rule of public order.

332. A legal person may exist in perpetuity if its juridical form permits.

CHAPTER TWO

CONSTITUTION OF LEGAL PERSONS

SECTION I

CONSTITUTING DOCUMENT

333. Every legal person must be registered in the legal persons registry.

334. Registration is effected by filing the constituting document or a declaration made according to law.

335. The constituting document or the declaration must indicate, in particular, the name and domicile of the legal person, the juridical form it assumes and, where applicable, its object, its capital structure and its duration.

336. Third persons in good faith are not presumed to have knowledge of the content of a document concerning a legal person, except of its name and domicile, merely because the document has been filed in the legal persons registry.

337. Where the constituting document or the declaration is incomplete, inaccurate or irregular, the legal person or one of its members may file a regularizing document in the legal persons registry if the insertion or rectification does not infringe on the rights of the members or of third persons.

338. No regularizing document likely to infringe on the rights of the members or of third persons may be filed unless ordered by the court, after hearing the interested persons and, if necessary, amending the proposed document.

339. Regularization has affect from the time of filing of the constituting document or the declaration, unless a later date is provided in the constituting document.

340. A legal person may, within a reasonable time, ratify an act performed in its interest before it was constituted; it is then substituted for the person who acted for it.

The ratification does not effect a novation; the person who acted has thenceforth the same rights and is subject to the same obligations in respect of the legal person as the administrator of the property of others.

341. A person who acts in the interest of a legal person before it is constituted is bound by the obligations so contracted, unless the contract stipulates otherwise and includes a statement to the effect that the legal person might not be constituted or might not assume the obligations subscribed in the contract.

342. A legal person that is not constituted under the Acts of Québec is bound to register in the legal persons registry and to state therein the address of its principal establishment in Québec.

The legal person remains governed by the laws of the place of its creation, subject, in respect of its activities, to the Acts of Québec.

SECTION II

NAME

343. The name of a legal person must be in conformity with the law.

344. A legal person may change its name by following the procedure established by law or, as the case may be, by its articles. No such change may be set up against third persons unless notice of it has been filed in the legal persons registry.

345. A legal person may carry on an activity or identify itself under a name other than its proper name, provided that a notice to that effect is filed in the legal persons registry.

346. The name of a legal person must include an indication in conformity with the law that clearly indicates its juridical form.

SECTION III

DOMICILE

347. The domicile of a legal person is at the place and address where it declares its head office to be.

348. A legal person may change its domicile by following the procedure established by law or, as the case may be, by its articles. No such change may be set up against third persons unless a notice of it has been filed in the legal persons registry.

SECTION IV

JUDICIAL CONFERMENT OF PERSONALITY

349. The court may confer juridical personality on a legal person which, before its registration, acted as a legal person and had publicly, continuously and unequivocally, all the appearances of a legal person both to its members and to third persons.

Only a person or group that registers may apply to have juridical personality conferred on it retroactively.

350. In no case may juridical personality be conferred retroactively unless the authority that should originally have controlled the constitution of the person or group has been called upon for its opinion.

351. The creditors of the person or group may intervene in the proceedings. They may also bring an action against the conferment of juridical personality by judgment in fraud of their rights.

352. The judgment confers juridical personality from the date it indicates if a copy is filed in the legal persons registry.

353. To decide an action by a third person in good faith, the court may make a ruling to the effect that a person or group is bound in the same manner as a legal person, if the person or group acted in respect of the third person as if he or it were a legal person.

CHAPTER THREE

ACCOUNTABILITY AND DISABILITIES OF MEMBERS AND DIRECTORS

354. The members of a legal person are accountable to it for what they promise to contribute to it, unless otherwise provided by law.

355. A director may, even in the performance of his functions, acquire interests in the property under his administration or enter into contracts with the legal person.

A director must immediately inform the legal person in writing of any acquisition or contract described in the first paragraph, indicating the nature and value of the interests he is acquiring, and request that the act be recorded in the minutes of proceedings of the board of directors or the equivalent. He must abstain from the discussion and voting on the question.

356. Where a director of a legal person fails to give information correctly and immediately of an acquisition or a contract, the court, on the motion of the legal person or a member, may, among other measures, nullify the deed or order the director to render account and to remit to the legal person the profit or benefit received.

357. In the event of fraud, the court, on the motion of any interested person, may hold the founders, the directors, the other senior officers or the members of the legal person liable to such extent as it indicates in damages to the legal person.

The members and the founders are not liable under this article unless they participated in the act charged and derived personal gain from it; the directors and the other senior officers are, for their part, presumed liable failing proof that they did not participate in the act and did not derive any personal gain from it.

358. The court, on the motion of any interested person, may prohibit a person from holding office as a director of a legal person if the person has been found guilty of an indictable offence involving fraud or dishonesty, whether or not the matter has any relation to a legal person, or who has repeatedly been found in default to comply with the Acts relating to legal persons or to respect his obligations as an administrator of the property of others.

The prohibition disqualifies the person from continuing to hold office as a director.

359. No prohibition may extend beyond five years from the latest act charged against the person concerned.

However, if the person has been sentenced to a term of imprisonment, the prohibition may be extended, but not beyond five years after the term has been served.

360. The court may lift the prohibition under the conditions it sees fit, on the motion of the person concerned.

CHAPTER FOUR

FUNCTIONING OF LEGAL PERSONS

SECTION I

ORGANS OF A LEGAL PERSON

361. The board of directors, the general meeting of the members and the other organs of a legal person function in accordance with the rules provided in this chapter, subject to contrary provisions of law.

362. The articles of a legal person establish contractual relationships between it and its members.

363. Where the rules governing the administration of the property of others provide that the beneficiary must or may perform an act, exercise a right, receive a notice or opinion or be consulted, the board of directors shall act for the legal person as beneficiary, unless otherwise provided by law or the articles.

364. The board of directors of a legal person may create management positions and other organs and vest certain of its powers in the holders of those positions and in those organs.

One and the same person may hold several positions if they are not incompatible. If he is the sole director, he may hold all the positions.

365. If a legal person consists of only one member and its management is not entrusted to a third person or carried on jointly with a third person, the member has the powers and duties of both the general meeting and the board of directors.

366. The directors or the members may waive the notice calling a meeting of the board of directors, a general meeting or a meeting of any other organ.

The mere presence of the directors or the members is equivalent to a waiver unless they are attending to object that the meeting was not regularly called.

367. Resolutions in writing signed by all the persons qualified to vote at a meeting are as valid as if passed at a meeting of the board of directors, at a general meeting or at a meeting of any other organ.

A copy of the resolutions is to be kept with the minutes of the proceedings or the equivalent.

368. Unless otherwise provided in the articles, if all the directors are in agreement, they may participate in a meeting of the board of directors by the use of a means that allows all the participants to hear each other, particularly by telephone.

The same rule applies to general meetings and meetings of other organs.

SECTION II

THE BOARD OF DIRECTORS

369. The board of directors shall manage the affairs of the legal person, subject to a members' unanimous agreement, where such an agreement is permitted.

The board of directors has all the necessary powers for that purpose, except those it has vested in other organs or other senior officers. In particular, it shall adopt and implement the by-laws necessary for the management of the affairs of the legal person, subject to approval by the general meeting.

370. The board of directors shall keep the list of members and the books and registers necessary for the proper functioning of the legal person.

The documents referred to in the first paragraph are the property of the legal person. However, it must allow the members to

inspect them. In the case of a legal person in which the members have unlimited liability, the creditors of the legal person have access to the list of members.

371. Except where otherwise provided by law, the directors of a legal person are designated by its members, according to the rules determined by law or by the articles.

The directors need not be members of the legal person unless the articles provide otherwise.

372. All human persons may be directors, except minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office.

373. No legal person may be a director of another legal person.

However, where a legal person designates a person to act as a director of another legal person, it is subject to the same conditions and obligations and incurs the same liability as if it were a director itself, without prejudice to the liability of the designated person.

374. No person may be designated as a director without his express consent.

375. In no case may the term of office of the directors exceed three years. If not fixed, it is one year. A term is renewable.

Notwithstanding the expiry of his term, a director continues in office until he is replaced.

376. Unless otherwise provided in the articles, the board of directors shall fill vacancies on the board. Such vacancies do not prevent the directors from acting.

If the number of directors no longer makes a quorum, the remaining directors may nevertheless convene the members.

377. The acts of a director or of a senior officer are not voidable on the sole ground of an irregularity of his designation or of his lack of qualification.

SECTION III

THE GENERAL MEETING

378. The general meetings of a legal person are held at the place of its head office or the place determined by its articles. They are called by the board of directors.

379. The annual general meeting shall meet within six months after the close of the financial year or sooner if so provided in the articles.

The first general meeting shall be held within six months from the constitution of the legal person.

380. The notice calling the annual general meeting shall indicate the day, time and place of the meeting and the agenda. It must be sent to each member qualified to attend not less than ten but not more than forty-five days before the meeting.

Ordinary business, such as the examination of the financial statements, the election of directors and, where such is the case, the appointment of the auditor, need not be mentioned in the agenda of the annual meeting.

381. Unless the articles provide otherwise, the notice calling the annual meeting must be accompanied with the balance sheet, the statement of the results for the preceding financial year, and a statement of debts and claims.

382. No business may be discussed at a general meeting except that appearing on the agenda, unless all the members entitled to receive notice of the meeting are present and consent. However, at an annual meeting, a member may raise any question of interest to the legal person or its members.

383. Unless the articles provide otherwise, the proceedings of the general meeting are invalid unless the majority of the qualified votes are present or represented and if a quorum is present when the meeting is opened.

384. Unless the articles provide otherwise, a member may be represented at a general meeting. The mandate must be in writing.

385. Unless the articles provide otherwise, decisions are taken by a majority of the votes taken.

However, an amendment to the constituting document must be decided by at least two-thirds of the votes taken.

386. The vote of the members is taken by a show of hands or, at the request of five members, by ballot.

If there are fewer than one hundred members, the request for a ballot must be made by at least three members; if there are fewer than five members, it must be made by the majority.

387. Ten members may requisition the directors or the secretary to call a special general meeting, stating in a written notice the business to be transacted at the meeting.

If there are fewer than one hundred members but over twenty, the requisition must be made by six members; if there are fewer than twenty members, it must be made by three of them.

388. If the directors or the secretary fail to call the special general meeting not later than twenty-one days after receiving the notice, the same number of the members who signed the requisition as were required to sign it may call the meeting.

Unless the members otherwise resolve at the meeting called pursuant to the first paragraph, the legal person shall reimburse to the members the expenses reasonably incurred by them in holding the meeting.

CHAPTER FIVE

DISSOLUTION AND LIQUIDATION OF LEGAL PERSONS

389. A legal person is dissolved by operation of law, by cancellation of its constituting document or by the operation of any other cause provided for by the constituting document or by law.

It is also dissolved where the court attests the expiry of the term or the fulfilment of the condition attached to the constituting document, the accomplishment of the object for which the legal person was constituted or the impossibility of accomplishing that object.

390. A legal person may also be dissolved by consent of two-thirds of the votes taken at a general meeting called expressly for that purpose.

The notice calling the meeting must be sent less than thirty days but not over forty-five days before the meeting and not at an inopportune time.

391. The juridical personality of the legal person continues to exist for the purposes of the liquidation.

392. The directors must give notice of the dissolution in the legal persons registry. They must proceed immediately with the liquidation of the legal person; otherwise, they may be held accountable for its acts.

393. A legal person is liquidated and its property devolves in accordance with the applicable Act in the particular case or, failing that, in accordance with this Code.

394. The liquidator of a legal person is appointed according to the articles or by the members. Failing that, he is appointed by the court on the motion of an interested person.

Notice of the appointment, as also of any revocation, must be filed in the legal persons registry and published in the *Gazette officielle du Québec*. The appointment and revocation may be set up against third persons from such notice.

395. The liquidator is seized of the property of the legal person and acts as an administrator of the property of another entrusted with full administration.

396. The liquidator shall first repay the debts, then the contributions of capital, if any; next, he shall partition the assets among the members in proportion to their interests or, otherwise, in equal portions, following if need be the rules relating to the partition of property in undivided ownership.

He shall dispose of the books and records of the legal person but shall remit the minute book to the public curator, who shall have custody of it until the expiry of seven years from the end of dissolution.

397. Unless otherwise provided by law, the property of an association devolves to another legal person or to a group of persons or of properties having objects similar to those of an association. The members or, failing them, the court shall designate the person.

398. Unless the liquidator obtains an extension of time from the court, the public curator shall undertake or continue the liquidation of a legal person that is not liquidated within seven years from the filing of the notice of dissolution.

The public curator then has the same rights and obligations as a liquidator, but any residue devolves to the state.

399. The liquidation of a legal person is closed by the filing of notice of the closing in the legal persons registry."

2. This Act will come into force at the time and according to the modalities to be fixed in the Act to implement the reform of the law of persons, of successions, and of property.

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