

NATIONAL ASSEMBLY

SECOND SESSION

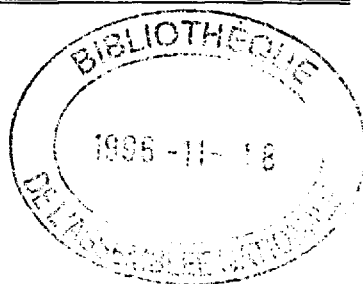
THIRTY-FIFTH LEGISLATURE

Bill 68

**An Act to amend the Civil Code of Québec and
the Code of Civil Procedure as regards
the determination of child support payments**

Introduction

**Introduced by
Madam Louise Harel
Minister of Income Security and Minister responsible for the Status
of Women**



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EXPLANATORY NOTES

This bill introduces in the Civil Code of Québec and the Code of Civil Procedure measures designed to facilitate the determination of child support payments.

The bill provides for the use of a table to determine, on the basis of both parents' disposable income and the number of children, their joint basic parental contribution in respect of their child. Also provided for is the use of a form which together with the table will serve to determine the annual amount of child support normally payable by a parent, taking into account certain expenses incurred in respect of the child and the nature of the custodial arrangement in his regard. The particulars of the form and the table will be prescribed by government regulation.

Moreover, no application concerning child support will be admissible unless both parents have filed the prescribed form and documents, either jointly or separately.

In addition, the bill establishes a presumption that the basic parental contribution meets the needs and is in proportion to the means of the parents and the child, and further provides that a parent's share of the basic parental contribution, increased if need be in light of certain expenses relating to the child, will be the standard by which to determine the child support payable by that parent. The court will have the discretion, however, to grant, by a decision giving explicit reasons, a level of child support that is different from that which would otherwise be applicable in order to spare either parent undue hardship or in order to confirm a private agreement between the parents which adequately provides for the child's needs.

Finally, the bill contains, in addition to transitional provisions, a provision requiring the tabling in the National Assembly of a report on the implementation of the new legal provisions three years after their coming into force.

Bill 68

AN ACT TO AMEND THE CIVIL CODE OF QUÉBEC AND THE CODE OF CIVIL PROCEDURE AS REGARDS THE DETERMINATION OF CHILD SUPPORT PAYMENTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Civil Code of Québec (S.Q. 1991, chapter 64) is amended by inserting, after article 587, the following articles:

“587.1. As regards the support owed to a child by his parents, the basic parental contribution, as determined pursuant to the rules for the determination of child support payments adopted under the Code of Civil Procedure, is presumed to meet the needs of the child and to be in proportion to the means of the parents.

The basic parental contribution may be increased having regard to certain expenses relating to the child which are specified in the rules, to the extent that such expenses are reasonable considering the needs and means of the parents and child.

“587.2. The support to be provided by a parent for his child is equal to that parent’s share of the basic parental contribution, increased, where applicable, having regard to specified expenses relating to the child.

The court may, however, increase or reduce the level of the support if it is of the opinion that, in the special circumstances of the case, not doing so would entail undue hardship for one of the parents. Such hardship may be caused, among other things, by high costs involved in exercising visiting rights in respect of the child, obligations of support toward persons other than the child, reasonable debts incurred to meet family needs, the assets of either parent or the resources available to the child.

“587.3. Parents may make a private agreement stipulating a level of child support that departs from the level which would be required to be provided under the rules for the determination of child support payments, subject to the court being satisfied that the needs of the child are adequately provided for.”

2. The Code of Civil Procedure (R.S.Q., chapter C-25) is amended by inserting, after article 825.7, the following chapter:

“CHAPTER VI.1

“APPLICATIONS RELATING TO CHILD SUPPORT

“825.8. The Government, by regulation, shall establish standards for the determination of the child support payments to be made by a parent, on the basis of the basic parental contribution determined in respect of the child, of the child care expenses, post-secondary education expenses and special expenses relating to the child and of the nature of the parents’ custodial arrangement in respect of the child. The Government shall prescribe the use of a form and of a related table determining, on the basis of the parents’ disposable income and the number of children, the basic parental contribution, as well as the production of evidentiary documents.

“825.9. No application relating to child support is admissible unless it is accompanied by the form prescribed for the determination of child support payments, duly completed by the plaintiff, and by the prescribed documents.

Likewise, no contestation of the application is admissible unless the prescribed form has been completed and filed by the defendant at the office of the court together with the prescribed documents. The court may, however, relieve the defendant from his default on the conditions it determines.

The rules provided in this article do not apply to a plaintiff or defendant who is not a parent of the child.

“825.10. The plaintiff parent must serve a copy of the prescribed form and prescribed documents with the application. Not less than one clear day before the presentation of the application, the defendant parent must serve a copy of the prescribed form and prescribed documents on the plaintiff parent.

“825.11. The parents may produce the prescribed form and prescribed documents jointly. If they do, they are exempted from service requirements.

“825.12. If the information stated in the prescribed form or prescribed documents is contested or incomplete or if the court considers it necessary, it may make good the deficiency and, for instance, establish the income of a parent. In establishing the income of a parent, the court may have regard, among other things, to the assets held by the parent and attribute to those assets the production of such income as it sees fit.

“825.13. The support to be provided to a child is determined without regard to support claimed by a parent of the child for himself.

A judgment granting support to a child and to a parent of the child must state separately the amount of support to be provided to each.

“825.14. Parents who make a private agreement stipulating a level of child support that departs from the level of support which would be required to be provided under the rules for the determination of child support payments must state precisely, in their agreement, the reasons for such departure.

Likewise, any judgment granting a level of child support which is at variance with a private agreement between the parents or, in the case of a contested application, with the information stated in a form filed by the parents, must state precisely the reasons for such variance and include references to the relevant items of the prescribed form.”

3. With the exception of the second paragraph of article 825.13 of the Code of Civil Procedure enacted by section 2, the provisions enacted by this Act are not applicable to proceedings in progress.

4. The Minister of Justice shall, on or before (*insert here the date occurring three years after the coming into force of this Act*), report to the Government on the implementation of, and advisability of amending, the provisions of this Act.

The report shall be tabled by the Minister in the National Assembly within the ensuing 15 days or, if the Assembly is not in session, within 15 days of resumption.

5. This Act comes into force on the date to be fixed by the Government.