

Draft Bill for the Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority

CONSULTATION PAPER

**Ministère de la Justice du Québec
October 2009**

Québec 

Draft Bill for the Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority

CONSULTATION PAPER

Ministère de la Justice du Québec
October 2009

This document can be accessed on the website of Ministère de la Justice : www.justice.gouv.qc.ca.

Legal deposit – 2009
Bibliothèque et Archives nationales du Québec
Library and Archives Canada
ISBN: 978-2-550-57486-6 (print version)
ISBN: 978-2-550-57487-3 (PDF version)

© Government of Québec

FOREWORD

The Québec government has tabled the *Draft Bill for the Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority* in the National Assembly. The government's aim is to adapt the law to match the new social and family situations in which adoption takes place, in order to provide a better response to the current needs of children in Québec.

All Quebecers are invited to express their views on this key topic during the parliamentary commission hearings that will begin on January 13, 2010.



Kathleen Weil
Minister of Justice and Attorney General of Québec
Québec, October 2009

TABLE OF CONTENTS

INTRODUCTION	7
1. New rules governing the confidentiality of adoption files	9
1.1 Who will be affected by the new rules?	9
1.2 Will the new rules affect adoptions pronounced before the rules come into force?	9
1.3 New rules concerning adopted persons who wish to identify or find their original parents	9
1.4 New rules for original parents who wish to identify or find their adopted child	10
1.5 New rules governing the disclosure of identity following the death of the person whose identity is sought	11
1.6 New rules concerning requests for information about the medical antecedents of the original parents of an adopted person	12
2. An innovation: open adoption	13
3. An innovation: adoption in which the pre-existing bond of filiation is not dissolved	15
4. An innovation: judicial delegation of parental authority	17
5. Other amendments	19

INTRODUCTION

The goal of this Consultation Paper is to explain the new rules that will apply to adoptions if the *Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority* is passed.

The Consultation Paper focuses, in particular, on

- the confidentiality of adoption files;
- open adoption;
- adoption in which the pre-existing bond of filiation is not dissolved;
- judicial delegation of parental authority.

The new rules are not intended to diminish the importance of full adoption. Full adoption will continue to play a fundamental role as one of the options available in Québec, by meeting the needs of children for whom a new filiation must be established that does not maintain significant bonds with their original family. Full adoption will remain the most appropriate model for a large number of children. However, since this model alone cannot meet the needs of all children in Québec, the new forms of adoption will be introduced to increase the range of options available.

The rules for open adoption and the rules governing the confidentiality of adoption files will apply to all adoptions, whether they take place within Québec or internationally, subject to the changes considered necessary in the case of international adoptions. Adoptions in which the pre-existing bond of filiation is not dissolved will only be possible when the adoption takes place within Québec.

The goal of this Consultation Paper is to stimulate discussion about the proposed rules, which are not yet in effect. Changes to the rules can still be made before they are presented in the form of a legislative Bill.

1 NEW RULES GOVERNING THE CONFIDENTIALITY OF ADOPTION FILES

1.1 Who will be affected by the new rules?

The new rules will apply to adopted persons, original parents and adoptive parents in connection with adoptions pronounced **after** the new rules come into force.

1.2 Will the new rules affect adoptions pronounced **before** the rules come into force?

No. The current rules governing the confidentiality of adoption files will continue to apply to adoptions pronounced before the new rules come into force.

The current rules will also continue to apply to children who have not yet been adopted, but for whom a consent to adoption was given or a declaration of eligibility for adoption was made before the new rules came into force. The current rules will continue to apply to the original parents of these children.

1.3 New rules concerning adopted persons who wish to identify or find their original parents

Under the new rules, will adopted persons be entitled to obtain information that will allow them to identify or find their original parents?

Yes, except if the original parents have registered a veto to prevent this.

Adopted children under the age of 14 must, in addition, have obtained the consent of their adoptive parents before being given access to the information.

What is a veto?

A veto is a document registered by the original parents to prevent

- the disclosure of their identity;
- contact of any kind.

Identity disclosure veto

The original parents will be able to register an identity disclosure veto to prevent their adopted child from obtaining information that allows them to be identified.

Contact veto

The original parents will be able to register a contact veto to allow their adopted child to receive all the information contained in the adoption file, including information allowing them to be identified, but also to state that **they refuse to be contacted by their adopted child.**

What ensures that an adopted person will comply with a contact veto?

Dissuasive measures will be prescribed by law, including a fine to punish adopted persons who fail to comply with a contact veto and who contact their original parents. The amount of the fine will be sufficient to ensure that adopted persons comply with the contact veto.

If the original parents register an identity disclosure veto or contact veto, does this mean that the adopted child will receive no information about his or her original parents?

No. Original parents who register a veto will be encouraged to provide

- a summary of their family history;
- a summary of their medical history;
- their reasons for registering a veto.

1.4 New rules for original parents who wish to identify or find their adopted child

Under the new rules, will the original parents be able to obtain information allowing them to identify or find their adopted child?

Yes, on two conditions:

- the adopted child must be aged 18 or over;
- the adopted child must not have registered a veto.

If no veto has been registered, the youth centre will contact the adopted child to obtain his or her consent, and to give him or her an opportunity to register a veto. This additional step is necessary to protect the rights of adopted persons who are unaware that they have been adopted.

What is a veto?

Adopted persons will be able to register a veto to prevent

- the disclosure of their identity;
- contact of any kind.

Identity disclosure veto

Adopted persons will be able to register an identity disclosure veto to prevent their original parents from obtaining information allowing them to be identified.

Contact veto

Adopted persons will be able to register a contact veto allowing their original parents to receive all the information contained in the adoption file, including information that allows an adopted person to be identified, **but also to refuse all contact with their original parents.**

What ensures that original parents will comply with a contact veto?

Dissuasive measures will be prescribed by law, including a fine to punish original parents child who fail to comply with a contact veto and who contact their adopted child. The amount of the fine will be sufficient to ensure that original parents comply with the contact veto.

Will people wondering whether they were adopted be able to ask someone apart from their adoptive parents?

Yes. Adopted persons aged 14 or over will be able to contact the Director of Youth Protection (DYP) directly to ask whether they were adopted.

If a person is unaware that he or she was adopted, will the DYP be able to release the information?

Yes. If the original parents make a request to find their adopted child aged 18 or over, as permitted by law, the DYP will be able to reveal to the adopted child that he or she was adopted, and inform the adopted child of his or her right to register an identity disclosure veto or contact veto.

For this reason, it is advisable for adoptive parents to let their child know that he or she was adopted, at a time they consider suitable.

Do adopted persons always need to register a veto to prevent their original parents from obtaining information about them?

Adopted persons under the age of 18

Adopted persons under the age of 18 do not need to register a veto, because their original parents will not be able to obtain information allowing them to be identified or contacted before they reach the age of 18.

Adopted persons aged 18 or over

If no veto has been registered, the DYP will contact the adopted person to obtain consent or to give the adopted person an opportunity to register an identity disclosure veto or contact veto to block contact by the original parents.

1.5 New rules governing the disclosure of identity following the death of the person whose identity is sought

What happens if the original parent has died when an adopted child makes a request to obtain information to identify or contact the original parent?

The answer depends on the situation:

- **if the original parent had not registered a veto**, the parent's identity may be obtained immediately;
- **if the original parent had registered a veto**, the parent's identity may be obtained two years after the parent's death, except if the file contains reasons that justify an extension of the veto. The two-year period gives the family time to grieve and to settle the deceased parent's succession without having to deal with the emotional impact of a request for identity disclosure.

What happens if an adopted child, aged 18 or over, has died when the original parent makes a request to obtain information to identify or contact the adopted child?

The answer depends on the situation:

- **if the adopted child had not registered a veto**, the child's identity may be obtained immediately, but the adoptive parents must be informed;
- **if the adopted child aged 18 or over had registered a veto**, the child's identity may be obtained two years after the child's death, except if the file contains reasons that justify an extension of the veto. The two-year period gives the family time to grieve and to settle the deceased child's succession without having to deal with the emotional impact of a request for identity disclosure.

The adoptive family will be notified of the fact that information allowing the adopted child to be identified has been disclosed to the original parents.

If, two years after a person's death, the youth centre refuses to disclose the person's identity because of reasons contained in the file, is a recourse possible?

Yes, an application can be made to the court to settle the matter.

The court will weigh the importance of the opposing rights and interests. The court may decide that the deceased person's identity will be disclosed, but on certain conditions. For example, the court may decide whether or not contact with members of the deceased person's family will be permitted.

1.6 New rules concerning requests for information about the medical antecedents of the original parents of an adopted person

Who is affected by the new rules?

The new rules concerning requests for information about the medical antecedents of original parents apply to persons adopted before or after the new rules come into force, and to the close relatives of adopted persons.

What are the new rules?

At the request of an adopted person, the court will be able to order that the information be forwarded confidentially to the medical authorities concerned, if the information is needed to prevent damage to the health of the adopted person or a close relative.

A close relative of an adopted person will also be able to exercise this right if the information is needed to prevent damage to the health of the adopted person or a close relative.

2 AN INNOVATION: OPEN ADOPTION

What is open adoption?

Open adoption is a form of adoption that allows the original parents and the adoptive parents to agree to remain in communication with each other and, **possibly**, with the adopted child, during the placement and following the adoption. An openness agreement must be signed for this purpose.

An openness agreement depends not only on the goodwill of the adoptive parents and original parents, but also on their willingness to give formal consent to the agreement.

What is an openness agreement?

An openness agreement is an agreement signed by the adoptive parents and the original parents, or by the adoptive parents and the tutor or person having parental authority. The agreement allows the parties

- to disclose or exchange information concerning the adopted child;
- to maintain personal relations between themselves and with the adopted child, during the placement or after the adoption.

For example, the original family and adoptive family may agree to exchange letters or photos, or plan a schedule of phone calls and visits.

The Director of Youth Protection (DYP) will be required to inform the original parents, tutor or person having parental authority, as well as the adoptive parents, of their right to sign an openness agreement, and of the content and effects of such an agreement. The DYP must also, if needed, encourage them to consult an advocate or notary to help them make an enlightened decision.

Is the consent of the adopted child necessary before an openness agreement is signed?

Yes, if the adopted child is aged 14 or over.

No, if the adopted child is under 14. However, the child's opinion may be taken into consideration.

When should an openness agreement be signed?

An openness agreement must be signed **before** the order of placement or adoption judgment is pronounced by the court. For the agreement to have effect, it must be confirmed by the court when it pronounces the order of placement or adoption judgment. The agreement will then have the same force as a judgment.

What is an order of placement?

An order of placement is a step that occurs before an adoption judgment is made. The court orders that the child be placed under the responsibility of the adoptive parents for a specified time to ensure that the child adapts to his or her adoptive family.

What happens if the people who sign the openness agreement cannot agree on how to apply it?

If the parties to an openness agreement cannot agree on how to apply it, they can request mediation. They can also apply to the court, which will settle the dispute in the best interests of the child.

What happens to the consent to adoption, order of placement or adoption judgment if the court amends or cancels the openness agreement?

Nothing. The amendment or cancellation of the openness agreement by the court does not invalidate the consent to adoption, order or placement or adoption judgment.

Can anyone apart from the original parents, tutor or person having parental authority sign an agreement with the adoptive parents?

People who are not party to the openness agreement (for example, a member of the extended family) may also, with the consent of the adoptive parents, agree to remain in communication with the adoptive parents or the adopted child.

However, these agreements do not have the same effect as an openness agreement. Each party to the agreement can terminate the agreement without the consent of the other party or parties.

3 AN INNOVATION: ADOPTION IN WHICH THE PRE-EXISTING BOND OF FILIATION IS NOT DISSOLVED

The law will be amended to allow the courts, in certain cases, to pronounce an “adoption in which the pre-existing bond of filiation is not dissolved”.

What is an adoption in which the pre-existing bond of filiation is not dissolved?

This is a form of adoption that creates a new bond of filiation between the adopted child and the adoptive parents, while maintaining the bond of filiation between the adopted child and his or her original parents. Only the adoptive parents will have parental authority.

Example

Pierre and Chantale are the original parents of Julie. Julie lives in a foster family with Nathalie, but knows her original parents. Nathalie wishes to become Julie’s adoptive mother. Julie wants to be adopted, but also wants to retain her original filiation, which is significant for her and forms part of her identity. Acting in Julie’s best interest, Nathalie therefore obtains an adoption in which the pre-existing bond of filiation is not dissolved. Julie becomes Nathalie’s child, but retains a bond of filiation with her original parents, Pierre and Chantale. Julie’s act of birth will show her original filiation, plus her adoptive filiation.

Why establish a new form of adoption?

The new form of adoption will meet the needs of children for whom full adoption, and the dissolution of bonds it entails, does not appear to be the best solution. An adoption in which the pre-existing bond of filiation is not dissolved will ensure the survival of bonds that are significant for the children adopted, and will make it easier for them to become part of their new family without turning their back on the past. The new form of adoption will be useful, for example, when one spouse in a couple adopts the child of the other spouse, when a child is adopted within the extended family (for example, by the grandparents), or when an older child is adopted.

Will adoptive parents still be able to request a full adoption?

Yes. The proposed amendments will not abolish full adoption as it exists today, which dissolves all the bonds between the adopted child and his or her original parents. Full adoption will still be an option when it is the legal mechanism that provides the best guarantees for the needs and rights of the child concerned.

What are the features of adoption in which the pre-existing bond of filiation is not dissolved?

In this form of adoption,

- the adopted child’s act of birth will contain the child’s original filiation and adoptive filiation;
- the adopted child will keep his or her original family name and will add the adoptive family name, unless the court decides otherwise;
- the adoptive parents will have all the rights and all the duties of parents with regard to the child; however, the original parents will have a subsidiary duty of support, meaning that they will have to provide support if the adopted child is unable to obtain support from his or her adoptive parents.

The DYP will be required to inform all the parties of the effects of an adoption in which the pre-existing bond of filiation is not dissolved, compared to an adoption in which the bond is dissolved.

Will the original parents be kept informed of their adopted child's progress?

Not necessarily. If the original parents want to be sure that they will be able to remain in communication, exchange information and maintain personal relations with the adoptive parents or adopted child, they will have to sign an openness agreement before the adoption takes place.

Will the original parents have any parental responsibilities toward the adopted child?

No. All the parental responsibilities for the adopted child will be taken over by the adoptive parents. However, the original parents will have to provide support if the adopted child is unable to obtain support from the adoptive parents.

For an adoption in which the pre-existing bond of filiation is not dissolved, will the child need to consent to the adoption?

Yes. The current rules governing consent by the child to a full adoption will also govern an adoption in which the pre-existing bond of filiation is not dissolved. In other words, if the child is aged 10 or over, the adoption can only take place with the child's consent. However, the court has discretion to pronounce an adoption even if the child refuses to give consent, except if the child is aged 14 or over.

4 AN INNOVATION: JUDICIAL DELEGATION OF PARENTAL AUTHORITY

What is parental authority?

Parental authority consists of a series of rights and duties that parents have toward their minor children.

More specifically, the parents have rights and duties relating to the custody, supervision and education of their children. They must feed them, support them and ensure their health and safety. Parental authority is exercised jointly by the father and mother.

Because of their parental authority, parents have the power to make all the necessary decisions to ensure the wellbeing of their children until they reach the age of 18.

Currently, can parental authority be delegated completely?

No, only the custody, supervision or education of a child may be partially and temporarily delegated.

What is the judicial delegation of parental authority?

The judicial delegation of parental authority allows one parent to share parental authority over a child with a spouse who is not the father or mother of the child. It also allows the delegation to another

person of all rights and duties with respect to a child, except the obligation to provide support and the right to consent to adoption.

The bond of filiation between the parent and the child is not broken in such a case.

The judicial delegation of parental authority will offer an alternative to adoption in certain situations when, in the child's best interests, a delegation of parental authority offers a better solution than a change in filiation.

Example

Nicole and Patrick are the parents of Sarah. For the last five years, Nicole has been bringing up her daughter with the help of her new spouse, Marc. Patrick looks after Sarah from time to time, and she visits him occasionally. Nicole wants to exercise her parental authority jointly with Marc, which would allow him, for example, to enrol Sarah in school, consent to medical care for her, etc. Nicole must submit an application to the court, but must first obtain Patrick's consent.

What are the effects of a judicial delegation of parental authority?

A judicial delegation will allow the parent of a child to share the exercise of parental authority with his or her spouse. In this case, the consent of the child's other parent will be necessary.

It will also be possible to delegate to another person all of a parent's rights and duties toward their child. The parent will be deprived of the exercise of all the rights, and will no longer be able to make decisions concerning the child. However, the parent will still have a duty of support toward the child, and will retain the right to consent to the child's adoption. Parental authority may be delegated to one of the following people:

- the child's grandmother, grandfather, uncle, aunt, brother, sister, and their respective spouses;
- the spouse of one of the child's parents.

A judicial delegation of parental authority will not be considered as an abandonment of responsibility and, as a result, will not create an entitlement to apply for a declaration of eligibility for adoption.

What effect will decisions by the delegatee have with regard to third parties?

When the delegatee (the person to whom the rights and duties are delegated) uses parental authority to make a decision, the decision will be considered to have been made with the agreement of the child's parents.

For example, if the delegatee enrolls the child in school, the school principal will be required to accept the enrolment as if it had been made by the parents.

5 OTHER AMENDMENTS

Under the new rules, in the event of a disagreement, the court will be able to decide whether or not personal relations with an adopted child should be maintained, and on what conditions. However, before imposing a solution, the court must facilitate conciliation between the parties to help them reach an agreement.

In addition, under the new rules, a person who has played a parental role in the life of his or her ex-spouse's child will be able to adopt the child in accordance with the rules governing the various forms of adoption.

Draft Bill for the Act
to amend the Civil Code and
other legislative provisions
as regards adoption
and parental authority