

2003
EDITION

when a couple
separates

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Québec 

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Other calling areas in Québec
(toll-free): 1 800 488-2323



www.revenu.gouv.qc.ca

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Starting a Business

What to Do in the Event of Death

When a Couple Separates

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- On-line at the Québec government portal: www.gouv.qc.ca
- At all 25 Communication-Québec offices (see page 66)

Note: Certain programs may change during the year. The information contained in this guide was verified in November 2002.

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Cette publication est aussi disponible en français sous le titre Quand un couple se sépare. Vous pouvez obtenir un exemplaire gratuitement à l'un des 25 bureaux de Communication-Québec. Voir page 66.

Foreword

Couples who are about to become separated or who are already separated experience powerful emotions, especially when they have children. The reorganization of a family often has devastating psychological, emotional, physical, social and economic effects. Since separation, divorce and the dissolution of a civil union are generally hard to deal with emotionally, couples should use available resources to help them through this difficult period. Hence, it is a good idea for couples to consult experts—professionals¹ or community resources²—about their rights and for support. That way, it will be easier for them to make all the decisions that will later affect their daily lives. Consulting resource people can also help members of a couple progress on a personal level. This Communication-Québec booklet contains general information about different aspects of separation for couples who are married, or in a civil or de facto union, in order to help them through the process. Changes concerning civil unions have been incorporated into the text.

It should be pointed out, however, that changes may occur after this brochure is published. When in doubt, inquire at your Communication-Québec office. The electronic version of *When a Couple Separates* is also available at the Québec government portal (www.gouv.qc.ca).

If you would like general information on the programs and services offered by the departments and agencies of the Québec government, feel free to call your regional Communication-Québec office. See, at the back of this guide, the list of the addresses and telephone numbers of our 25 Communication-Québec offices. If, after reading the guide, you need additional information about Government of Canada programs, call 1 800 622-6232 or visit the Government of Canada Website (www.canada.gc.ca) (teletype machine, see page 64).

We sincerely thank the departments and agencies of the Québec government, particularly the ministère des Relations avec les citoyens et de l'Immigration, the ministère de la Justice, the ministère du Revenu, the Régie des rentes, and a number of other departments and agencies that worked closely with us in updating of this information document.

1 Attorneys, counseling specialists, notaries, psychologists, social workers, mediators, etc.
2 CLSCs, family support organizations, youth centres, shelters, etc.

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Psychosocial aspects

Resources

Counseling for couples

Problems experienced by a couple may be temporary. When difficult times are encountered, the option exists of seeking help outside the couple, with the goal of finding solutions to conflicts. In some cases, a resource person can help a couple get through a difficult period and perhaps even bring about a reconciliation.

In Québec, a number of psychosocial services are offered by local community service centres (CLSCs). Social workers can be consulted by couples experiencing serious problems, whether on family-related issues (separation, divorce or the dissolution of a civil union, domestic violence, parenting problems) or personal issues (depression, addiction, bereavement, adapting to a serious illness, etc.).

The telephone number of your CLSC can be found in the business section or, for some regions, in the white pages of the phone book, under CLSC. Communication-Québec can also give you the phone number for the CLSC nearest you.

Action and mutual assistance network

In addition, many regional organizations can help families facing a separation. A number of them are supported by the Fédération des associations de familles monoparentales et recomposées du Québec (FAFMRQ), including fathers' groups. To find out about the organizations in your region that are affiliated with this association or for other information, contact:

Fédération des associations de familles monoparentales et recomposées du Québec

8059, boulevard Saint-Michel
Montréal (Québec) H1Z 3C9
Montréal area: (514) 729-6666
Fax: (514) 729-6746
E-mail: fafmrq@cam.org
Website: www.cam.org/fafmrq

L'Réseau des centres de femmes du Québec is a provincial umbrella organization of 91 women's centres throughout Québec's regions. L'Réseau can put you in contact with the centres in your region, which offer women a place where they can feel they belong, a solution to isolation, and an action, education and mutual assistance network. Some of these centres offer basic legal services or can refer you to specialized resources if need be. For information, contact:

L'Réseau des centres de femmes du Québec

110, rue Sainte-Thérèse, bureau 507
Montréal (Québec) H2Y 1E6
Montréal area: (514) 876-9965
Fax: (514) 876-9176
E-mail: rfemqc@total.net

Mutual assistance for men

The Maison père-enfant du Québec provides support for fathers experiencing problems during a breakup. For example, psychological support, basic legal services, workshops on a variety of themes, and services to assist in Court appearances are offered. A number of volunteers work for the organization in helping fathers who are trying to reorganize their families. The organization can be reached seven days a week.

Maison père-enfant du Québec

2316, boulevard Rosemont
Montréal (Québec) H2G 1T7
Tel.: (514) 249-4572
Elsewhere in Québec: 1 877 279-0557
Fax: (514) 279-0172
E-mail: perenfant@pensionalimentaire.com

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Domestic Violence

S.O.S. Conjugal Violence gives victims of domestic violence immediate assistance. The service consists of a hotline that can be reached from anywhere in Québec 24 hours a day, 7 days a week. People facing problems of domestic violence are encouraged to take advantage of this bilingual, free and confidential service.

S.O.S. Conjugal Violence

Montréal area: (514) 873-9010

Elsewhere in Québec: 1 800 363-9010

Teletype machine: see page 64

Life goes on

A couple's breakup is considered the most stressful situation in life, second only to bereavement. Separation, divorce and the dissolution of a civil union are very difficult personal steps. It can be helpful to obtain psychological assistance or support before, during and after the breakup. Such a resource can ease the transition to a new family life. Taking advantage of it during a separation can also help improve relations between the former partners. For example, when disagreements arise, the focus will be on adopting a positive attitude and trying to find solutions instead of attempting to cast blame.

Moreover, during a separation, a divorce or the dissolution of a civil union, parents often have to delve deeply into themselves in order to make the right decisions. They want to act in the best interests of their children in making decisions that concern them, while considering their own personal interests as well. Since a breakup entails changes for all family members, it is vital to take the needs of everyone into account when deciding how the family is to be restructured.

Children and Separation

When a separation occurs, parents are concerned about the welfare of their children. One good way of helping children adapt to the new family situation is to continue being an active parent to them, in order to maintain the link that will enable them to grow harmoniously into adulthood. The resource material consulted suggests that:

- The situation should be explained to the children as simply as possible without giving details of the parents' private lives

- The children should be given reassurance, since the idea that their parents will no longer be living together is agonizing for some
- The children should be told often that their parents will still love them even after the separation, and that they are not responsible for the breakup
- Absolute rules should be established. For example, no arguments, insults or unpleasant comments in front of the children, and an effort should be made to maintain contact between the two sides of the family

By helping children deal with the separation, their parents will equip them well to face life's other difficulties in the years ahead.

The tell-tale signs that indicate children are experiencing problems with a breakup include their general reactions, their perception and understanding of the separation, and their performance at school. Parents attentive to these signs will use their judgment in deciding if the situation warrants consulting a professional or obtaining help from community organizations. CLSCs can recommend to parents resources for coping with such situations.

Support for parents

Health Canada has published a free guide, *Because Life Goes On ... Helping Children and Youth Live with Separation and Divorce. A Guide for Parents* (2nd edition). This guide contains much practical advice for parents dealing with a breakup. It explains clearly how children react to a separation. Topics such as assisting children in adapting to two homes, remarriage and reconstituted families, shielding children from parental conflicts, communicating effectively with children, preadolescents and adolescents help readers gain a much better understanding of the factors involved in separation.

You can obtain the guide free of charge directly by fax, by filling out the order form on the Internet at

www.hc-sc.gc.ca/hppb/mentalhealth/mhp/e_pubs.html,

by downloading the guide from

www.hc-sc.gc.ca/hppb/mentalhealth/mhp/pub/life/index.html

in PDF format, or by writing to Health Canada at:

Health Canada Communications/Publications

Address Locator 0900C2

Brooke Claxton Building

Tunney's Pasture

Ottawa, Ontario K1A 0K9

Phone: (613) 954-5995

Fax: (613) 941-5366

Teletype machine: see page 64

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Legal Aspects

Note that the information session on family mediation is mandatory by law for couples with dependent children who have a dispute and intend to institute Court proceedings.

Choosing family mediation: a good way to reach an agreement

The **family mediation program** is for **couples with a dependent child**, whether they are married, in a civil union or de facto spouses, who:

- Have taken steps to separate or are already separated
- Disagree on matters such as custody of the children, access arrangements, support, partition of the family patrimony and other related financial matters, and
- Plan to go to court

Aims of mediation

A committee made up of representatives of various organizations and resource persons in the field was set up by the Minister of Justice to verify whether the law's objectives were being met. You can consult the committee's various reports on the ministère de la Justice Website (www.justice.gouv.qc.ca).

The *Act to institute, under the Code of Civil Procedure, pre-hearing mediation in family law cases and to amend other provisions of the Code*, passed on June 13, 1997, constitutes a new approach designed to promote cooperation. Separating, divorcing or obtaining the dissolution of a civil union while trying to come to an amicable agreement, where possible, is a much less distressing experience than taking disputes to Court, and is generally less expensive. Privacy and the rules of confidentiality are always complied with in mediation. The mediator has the duty to ensure that the parties have given their free and enlightened consent to committing themselves to mediation and to arriving at agreements, and that no pressure

has been applied by either party. The mediator is particularly vigilant in cases of violence, drug or alcohol abuse and parental neglect, refers the parties to other resources and terminates the mediation, when required.

Role of the mediator

A mediator is not a therapist, who tries to help the couple arrive at a reconciliation, although the mediator's role does involve facilitating discussion. The mediator must provide information (but not legal advice) so that the law is abided by when decisions are taken regarding child custody and access rights, support, partition of the family patrimony, settlement of the matrimonial regime, and the present and future financial aspects of these matters. The mediator prepares, in cooperation with the couple, a summary draft agreement that can serve as a basis for preparing proceedings to be submitted to the Court. Since a mediator must be impartial, one should not count on the mediator to settle disputes. Moreover, former partners need their own legal advisors, both to ensure that the agreement does not penalize them and to put the summary draft agreement into legal form.

Family mediation program

Married and de facto spouses, and spouses in a civil union who have a **dependent child** and who are going through a separation, a divorce, the dissolution of a civil union or a review of a judgment have access, within the limits provided for by law, to the services of an accredited mediator. Mediation can take place before or after proceedings are instituted. The parties choose together an accredited mediator from a professional order. The government family mediation program pays the fees of an accredited mediator for **six** sessions. For any change in a judgment, the parties are entitled to **three** other free sessions. To be eligible for this free service, the spouses must make sure that the mediator they have chosen is accredited and that the mediator's fees are in keeping with the rate set by law. The mediator can inform you of the fee provided for in the family mediation program.

A list of accredited mediators is posted for consultation in all courthouses and is available on the Website of the ministère de la Justice (www.justice.gouv.qc.ca). You can also find the names of mediators in the yellow pages of the phone book under the heading "Mediation Services". It is estimated that there are nearly 900 accredited mediators throughout Québec. Five professional orders are authorized by the Québec government to accredit their members:

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Steps following mediation

Once the mediation process is over, it is time to give legal force to the agreements reached in the summary draft agreement, which is a kind of outline of what the couple decided on in mediation. Some couples decide not to have their decisions legalized. To provide **legal protection** for the agreements negotiated jointly in mediation, the couple must obtain a **judgment** of the Court (regarding the partition of the family patrimony, child custody, access rights, support and so on).

The diagram below illustrates some of the options available to couples who separate.

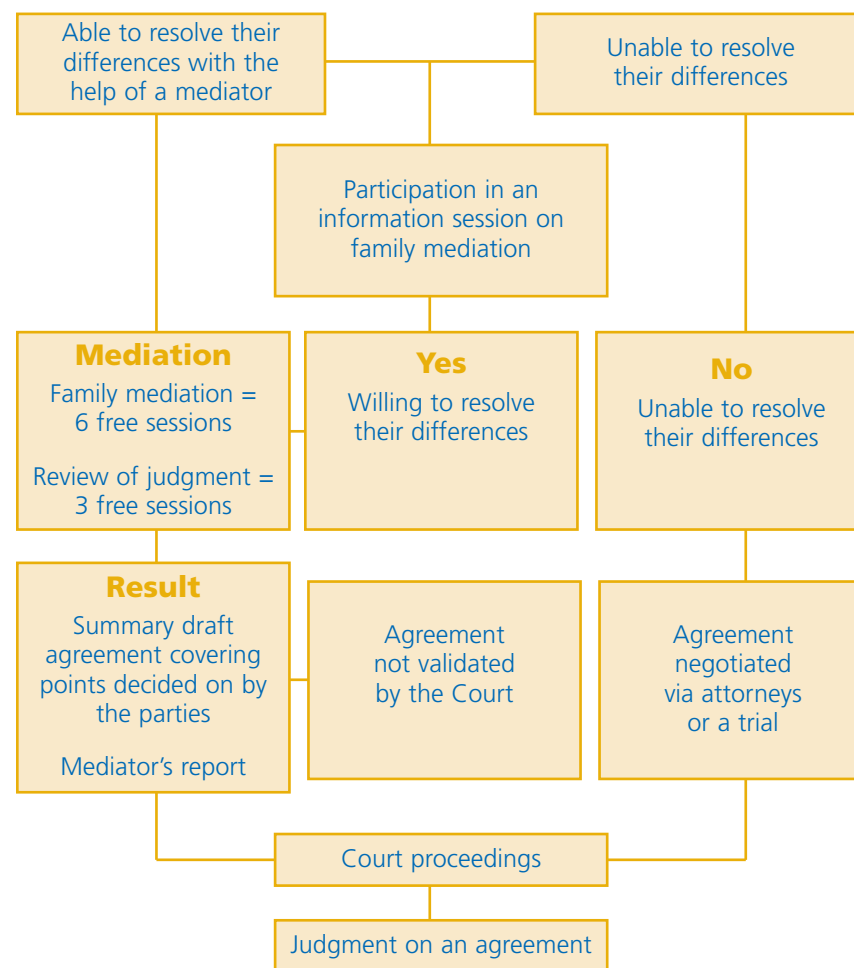
Diagram of family mediation stages*

Prerequisite: Couple with a dependent child

Possible exemption from the obligation to attend an information session

POSSIBLE STAGES

De facto separation of the couple



* This diagram may vary, depending on whether the information session or the mediation takes place before or after proceedings are instituted.

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More information about the family mediation program can be obtained from:

- Any courthouse
- The ministère de la Justice Website (www.justice.gouv.qc.ca)
- Professionals active in the field of family mediation (attorneys, counseling specialists, and psychoeducators, notaries, psychologists, social workers, etc.)
- Youth centres
- The professional associations referred to on page 14

Separation, Divorce and the Dissolution of a Civil Union

De facto separation

All couples can have a de facto (or non-legal) separation. Some couples agree amicably, when they break up, on the obligations stemming from their union for which they are still responsible: custody and rearing of the children, support and partition of property acquired together. This is also the case with some couples who, after concluding an agreement during family mediation, decide not to have it legalized. Since these agreements are based on trust and the good will of the spouses, there is no legal recourse to compel their enforcement.

Separation from bed and board

Separation from bed and board applies only to married couples.

A married couple can decide to legalize their separation via a Court judgment. That way, provisions for the division of time spent with the children (custody, access rights, etc.), the partition of property and support are legally protected. In terms of the law, separation from bed and board is a judicial proceeding with the main effect of relieving the spouses of the obligation to live together, while legalizing the agreement they have reached. Since separation from bed and board does not break the bonds of marriage, the other legal obligations stemming from the union remain in effect. The bonds of marriage are not broken until the annulment of the civil marriage, divorce or the death of one of the partners. If both spouses apply for separation from bed and board, this is a joint action (see section on proceedings for separation, divorce and the dissolution of a civil union, page 21).

If one of the spouses is opposed to separation from bed and board or if the spouses are unable to arrive at an understanding (draft agreement) regarding terms, the Court will not pronounce separation from bed and board except for one of the grounds provided for by law:

- At the time of the application, the spouses are not living together.
- There is a serious failure by one of the spouses to fulfil a marital obligation; among the obligations of marriage are fidelity, contribution to the responsibilities of the household, and mutual assistance and respect.
- A combination of factors makes it intolerable for them to continue to live together.

In reality, it is difficult to oppose separation from bed and board. However, the grounds stated in the proceeding can be opposed and interim relief can also be contested (child custody, support, use of the family residence, etc.). If the spouse from whom separation from bed and board is sought does not contest the application or does not appear in Court, the judgment will be rendered by default.

Since separation from bed and board does not break the bonds of marriage, the spouses cannot marry someone else until they are divorced.

Divorce

Divorce is a legal proceeding that ends a marriage. It is not necessary for a judgment of separation from bed and board to be rendered before a divorce is obtained. Since 1985, all that has been required is evidence that the marriage has failed. The grounds for divorce are as follows:

- The spouses were living apart when the divorce application was filed (at least one year must elapse between the time they stopped living together and the divorce judgment).
- The respondent spouse committed adultery.
- The respondent spouse showed mental or physical cruelty toward the other spouse.

It is actually difficult to oppose divorce. However, a party can oppose one of the grounds raised (divorce pronounced because of one year of separation, mental or physical cruelty, etc.). A motion for interim relief (child custody, support, etc.) can also be opposed. A divorce judgment can be handed down by default; if the respondent spouse fails to contest the application or to appear at the hearing, the judgment can be rendered against him or her.

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Grounds

One-year separation

In the case of a couple that has been separated for a year, one spouse can file for divorce or both can file for divorce jointly. There is no need to say that one or the other is to blame for the breakup.

A divorce application can be filed at the time of the breakup, but the judgment will not be handed down until **one year** after the couple **ceases living together**.

Adultery

Since the first legal duty of spouses is to be faithful to one another, adultery, if substantiated, can demonstrate that the marriage has failed. The "victim" of the infidelity can file for divorce provided he or she has proof of the adultery. If there is no proof, a spouse's admission of infidelity can be accepted as legal proof.

Physical or mental cruelty

In the case of physical cruelty, the testimony of the victim is considered sufficient evidence by the courts. It is not always necessary to have a medical report, although it would constitute even more solid proof. Mental cruelty is defined as behavior on the part of one spouse toward the other that makes their life together intolerable: humiliation, harassment, excessive control, insults, unjustified refusal to engage in sexual relations, alcohol or drug abuse, etc. For a divorce to be pronounced on the grounds of mental cruelty, all important points must be noted in the evidence (the dates and locations of incidents and the names of any witnesses) in order to strengthen the case. Local CLSCs offer resources that provide advice and support for people experiencing a crisis.

Dissolution of a civil union

The new legislation on civil unions

A civil union gives the spouses, whether they are of the same sex or the opposite sex, the same rights and obligations as married couples. It enables them to live together as spouses who owe one another mutual respect, faithfulness, support and assistance. Spouses must be at least 18 years of age to enter into a civil union. A civil union is formed under the same rules as a civil marriage. This new civil status for spouses enables them to avail themselves of the protection of the family residence, a civil union regime based on the rules of matrimonial regimes, and the right to inherit from their spouse without a will and to consent to care being given to their spouse in the event of incapacity. The new legislation also recognizes clearly that couples in a civil union can adopt children and be recognized as parents.

In an amicable separation, a simple declaration received before a notary testifies to the dissolution of the civil union. It is in keeping with the joint determination of the spouses to put an end to their life together, provided that the consequences of the separation are settled beforehand and no child is involved. When a couple without children does not agree on the decisions to be made in the wake of the breakup or when the interests of children are involved, the dissolution of the union must be pronounced by the Court. For more information, obtain a copy of the pamphlet on civil unions from the ministère de la Justice or Communication Québec, or on the ministère de la Justice's Website (www.justice.gouv.qc.ca). It is also recommended that you read the *Guide pratique de la vie à deux* in the Protégez-vous Collection, which you can obtain by calling 1 800 667-4444 or on the following Website: (www.protegez-vous.qc.ca).

Proceedings for separation, divorce and the dissolution of a civil union

Importance of documents

To facilitate the steps involved in a separation, it is to your benefit to keep important papers: bills, contracts, documents showing to whom property belongs, etc. In the case of spouses who were married under the matrimonial regime of separation of property, this is even more important, since each spouse retains sole ownership of his or her property. In the case of de facto spouses, each spouse must keep all bills or documents proving ownership of property, in case the couple breaks up. Couples in a civil union are subject to the matrimonial regime of partnership of acquests, if they did not choose another regime.

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Attorneys

Most attorneys charge an hourly rate. Bear in mind that, in such cases, all professional services and expenses are billed. Billing rates and methods may vary from one attorney to the next, according to the number of years of experience and the specialty. Under certain circumstances, when it is possible to anticipate the outcome of the judgment, some attorneys request a lump sum to cover all services. If a party's financial situation is precarious, legal aid may be available (see page 24).

During the first consultation, attorneys **must state their rates** and any other foreseeable expenses in the case. Most attorneys have clients sign a contract for professional services and fees, stating the agreement reached between the them. You should prepare carefully for your first appointment with your attorney. Make sure that you have with you all the documents and information you need:

- The marriage or civil union contract, if any
- The marriage certificate or a copy of the act of marriage, or the civil union certificate or a copy of the act of civil union (ask the notary to indicate the documents you need before ordering them from the Registrar of Civil Status)
- Originals or photocopies of the birth certificates of both spouses and any children (ask your attorney, or notary in the case of a civil union, if he or she will accept a photocopy)
- The couple's last common address and the current address of each spouse
- A brief inventory of the couple's property and debts, supported by statements
- An explanation of the grounds for the application and for corollary relief (for example, the use of the family residence)
- Any other document that could prove useful in the proceedings

How to obtain a certificate, or a copy of an act of, birth, marriage or civil union

You must obtain and complete the form entitled *Request for a certificate or a copy of act*. The form is available at Registrar of Civil Status counters and on the Registrar's Website (www.etatcivil.gouv.qc.ca), where the form can be printed only, at Communication-Québec offices, CLSCs, courthouses and Desjardins caisses populaires. The cost is \$15 for a certificate and \$20 for a

copy of an act. A copy of an act reproduces in full the information contained in an act of birth, marriage or civil union. For accelerated processing in justified cases, the fee is \$35 per certificate. Two documents proving the applicant's identity must be submitted with the application; they must contain at least one photograph of the applicant and the address of his or her residence or place of work. Read the "Instructions" section of the form. The application may be submitted by mail, by fax or in person at a Registrar of Civil Status counter.

QUÉBEC

Registrar of Civil Status

205, rue Montmagny
Québec (Québec) G1N 2Z9
Tel.: (418) 643-3900 or 1 800 567-3900
Fax: (418) 646-3255
E-mail: etatcivil@dec.gouv.qc.ca
Website: www.etatcivil.gouv.qc.ca

MONTREAL

Registrar of Civil Status

2050, rue De Bleury, 6^e étage
Montréal (Québec) H3A 2J5
(Place-des-Arts Métro station)
Tel.: (514) 864-3900 or 1 800 567-3900
Fax: (514) 864-4563
E-mail: etatcivil@dec.gouv.qc.ca
Website: www.etatcivil.gouv.qc.ca

Office hours:

Monday through Friday, from 8:30 a.m. to 4:30 p.m.

Using the services of an attorney

You may need the services of an attorney to handle the legal proceedings. It is important to note, though, that **only attorneys admitted to the Barreau du Québec** can represent you and file the proceedings. During the proceedings for a judgment for separation from bed and board, a judgment of divorce or a judgment of dissolution of a civil union, you can file a motion with the Court for interim relief. Interim relief is designed to temporarily settle urgent matters such as support, use of the family residence, child custody and access, and any related financial matters.

The divorce takes effect on the 31st day after the judgment is handed down. During the 30-day interim period, the judgment can be appealed from if a party believes that an error has been made. In that case, the divorce does not take effect until the appeal has been heard and decided. The appeal deadline is 30 days. The divorce certificate, issued free of charge by the courthouse at the same time as the divorce judgment, constitutes proof of the change in civil status. Additional copies may be obtained by contacting the Clerk of the Superior Court in the district where the judgment was handed down.

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Simplified procedure for the dissolution of a civil union

If the couple has no children and agrees on the consequences of the breakup, the procedure is simple: the civil union can be dissolved before a notary. Once the dissolution of the civil union is settled, former spouses of the same sex can form another civil union. If the former spouses are of the opposite sex, they can choose to form another civil union, marry in a church or marry in a civil ceremony.

Legal aid

It costs money to institute legal proceedings: attorney's fees, Court costs, bailiff's fees, etc. People with a low income can apply for legal aid so that these costs will be partly or entirely covered, or they can apply for the services of an attorney of their choice who agrees to accept legal aid cases.

Family income and all property are taken into account in establishing eligibility for legal aid. Legal aid can cover all expenses or an amount determined according to income. For contact information regarding the legal aid office in your region, call your Communication-Québec office and, for more information, ask Communication-Québec for a copy of the pamphlet *Legal Aid, Ongoing Expertise ... Gratuitous or At Little Cost*.

Settling the breakup amicably, without the services of an attorney

The law allows you to legally separate or divorce without using the services of an attorney. To do so, the spouses file a joint application and come to an amicable agreement. Although it makes it possible to save on legal fees, this procedure, called a "joint application for divorce on a draft agreement", should be used with caution, since it implies that each spouse is aware of the personal, legal, financial and tax consequences of the draft agreement. It is essential for the spouses to be fully aware of their rights if they chose this procedure. By consulting a professional, they will be better able to assess the impact of a decision and avoid incurring further expenses in the future.

To learn how to draw up a joint application, which documents must be included and the legal format that the application must take, obtain the brochure entitled *Joint Application for Divorce on Draft Agreement*, published by the ministère de la Justice. It is also possible to access this document on the ministère de la Justice's Website (www.justice.gouv.qc.ca).

If you decide to proceed by means of a joint application, it is important to give precise details of the agreements reached, while making every effort to plan as far ahead as possible. For example, it is preferable to state **the date on which support payments will end** by using terms such as: "when the child is of legal age and becomes financially independent", or "when the child is of legal age and has completed a full-time program of university-level studies". By proceeding in such a fashion, you will not have to go back to Court to terminate child support and thereby incur additional expenses.

Spouses who agree on all aspects of their breakup can decide to prepare their own joint application on a draft agreement for separation from bed and board, divorce or the dissolution of a civil union. They must fill out and attach to their application the child support determination form. The documents must be sworn to by a person qualified to take oaths (the services of a commissioner for oaths are available from the civil office at the courthouse). Attach all the required documents: the mediator's report, provincial and federal income tax returns, the sworn declaration of income for each party (Form 827.5, available from the civil office at the courthouse), notices of assessment, the most recent pay stubs, financial statements, etc. Visit the ministère de la Justice's Website (www.justice.gouv.qc.ca) for the brochure entitled *Joint Application for Divorce on Draft Agreement* and the forms required.

For the joint application, the parties prepare and sign a written declaration or agreement on legal-sized paper (8 1/2 in. x 14 in.), setting down in detail all the points on which they have agreed. The entire file will then be submitted to the Special Clerk of the Superior Court, who will verify whether:

- The agreement complies fully with the law
- Support payments are calculated in keeping with the *Regulation respecting the determination of child support payments* and
- Any departure from the law is justified and reasonable in the interests of the children and the parties

A couple that wishes to obtain a separation from bed and board can also file an application with the Court without using the services of an attorney. Furthermore, if a proceeding is contested, a spouse can represent himself or herself in Court, whether or not that spouse was the one who instituted the proceeding.

In preparing an application for separation from bed and board, you can use the model in the brochure entitled *Joint Application for Divorce on Draft Agreement*, published by the ministère de la Justice, and adapt it to your specific situation.

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Effects of Separation from Bed and Board, Divorce and the Dissolution of a Civil Union

Effects of separation from bed and board

Separation from bed and board does not break the marriage bonds. It does, however, allow the spouses to:

- Cease living together
- Partition the family patrimony, if this has not already been done
- Liquidate the matrimonial regime, if this has not already been done (spouses are now governed by the rules of the regime of separation of property)
- Settle the terms of the separation (child custody, access rights, granting of support or of a compensatory allowance, etc.) and related financial matters. These arrangements are known as corollary relief, and
- **Inherit from the other spouse in the event of that he or she dies without a will** (since separation from bed and board does not end the marriage, the spouses remain each other's legal heirs)

Effects of divorce

Divorce **definitively** ends the legal rights and obligations of spouses with regard to one another. It allows them to:

- Partition the family patrimony, if they have not already done so
- Liquidate the matrimonial regime, if they have not already done so
- Settle the terms of the breakup as regards corollary relief (child custody, access rights, i.e. visiting and taking out the children, support, compensatory allowance, etc.) and
- Remarry in a civil ceremony (for remarriage in the Catholic Church, an annulment of the religious marriage must be obtained first, unless the former spouse has died (see page 32))
- For other religions, check with the religious community

With respect to financial obligations, note that an exception exists in cases where one spouse is an immigrant sponsored by the other spouse (see page 53).

Effects of the dissolution of a civil union

The dissolution of a civil union terminates the obligations and legal rights of the spouses toward one another. It authorizes:

- The partition of the family patrimony
- The liquidation of the civil union regime
- Settlement of the terms of the breakup in regard to corollary relief (child custody, support, compensatory allowance, etc.)
- A subsequent civil union when the dissolution of the previous union has been settled. Once the civil union is dissolved, same-sex couples can again enter into a civil union. Couples in which the partners are of different sexes have the choice of a civil union, marriage in a church or civil marriage

Following a separation, a divorce or the dissolution of a civil union, it is important to notify government agencies of your change of address and of the change in your civil status. The Communication-Québec guide *Change of Address* can assist you in doing this.

Principles of the family patrimony

This section does not concern couples in a de facto union.

All married couples, **except those who legally renounced** the family patrimony before December 31, 1990, those who had already applied to renounce it in a legal proceeding before May 15, 1989 and those who had been separated for several years prior to that date and had settled all the details of their separation, are subject to the *Act to amend the Civil Code of Québec and other legislation in order to favour economic equality between spouses*, regardless of their matrimonial regime or the provisions of their will. That legislation recognizes the equality of the spouses and protects the spouse with **the least financial resources**.

As a rule, with divorce, separation from bed and board and the dissolution of a civil union, **each spouse is entitled to receive half of the value of the family patrimony**. However, when the family patrimony is being evaluated, it is possible, under certain conditions, to prove that the partition of property provided for by the Act would be unfair. The family patrimony includes certain property or items one spouse may own:

- Primary and secondary residences used by the family or the rights conferring their use

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- Furniture found in the residences and used by the family
- Motor vehicles used for travel by the family
- Income accumulated during the marriage or civil union by each of the spouses in RRSPs, and private and public group pension plans (CARRA), as well as employment income registered with the Québec Pension Plan and the Canada Pension Plan (see pages 53, 56 and 59 on this subject)

Property excluded from the family patrimony

All property not specifically included in the patrimony is excluded from it. For example:

- Property received as an inheritance or a gift either before or during the marriage or civil union, and items acquired with this property, as well as their added value
- Personal property bought and paid for in full before the marriage or civil union
- Proceeds from the sale of property purchased before the marriage or civil union and used to buy or improve property in the family patrimony during the marriage or civil union
- Money, regardless of its origin (salary, savings, bank investments, etc.)
- Income-producing property, businesses, etc.
- The Québec Pension Plan, if the marriage or civil union is dissolved because of the death of one of the spouses; the surviving spouse is then entitled to the survivor's benefit granted by the Régie des rentes du Québec
- Pension benefits if the marriage or civil union is dissolved because of the death of one of the spouses and the deceased had named the surviving spouse as his or her pension plan beneficiary; the designated surviving spouse then inherits all the income from the pension plan without having to share it with the deceased's other heirs.

Seizure before judgment

For reasons considered compelling, property may to be seized before judgment if one of the spouses is afraid that the other will sell or destroy part of the family patrimony or that it will deteriorate.

Renunciation of the family patrimony

It is recommended that you find out all you can about your rights in, and the consequences of, renouncing the family patrimony.

It is possible to avoid separation of family patrimony in the following cases:

- If the spouses signed a full or partial renunciation before a notary prior to December 31, 1990
- If married spouses or spouses in a civil union renounced the partition, in whole or in part, in conjunction with judicial proceedings for separation from bed and board, divorce, dissolution of the civil union or annulment of the marriage or civil union, provided the renunciation was ratified by the Court
- If a spouse has partly or wholly renounced his or her share after a judgment of separation from bed and board, a judgment of divorce, a judgment of dissolution of a civil marriage, a judgment of annulment of marriage or a judgment of annulment of a civil union, or following the death of his or her spouse

Family residence

This section does not apply to de facto spouses.

The family residence is the place where family members normally live and engage in their main activities. One spouse in a marriage or civil union cannot dispose of the family residence or the furnishings that are for the family's use without the consent of the other spouse. Anyone who does not fulfil that obligation under the *Civil Code of Québec* can be sued for damages. If a spouse did not consent to the sale of the family residence, he or she can easily have the transaction cancelled if a **declaration of family residence** was registered beforehand. That declaration provides additional protection that either spouse can see to alone or with his or her partner. A spouse who makes the declaration on his or her own is not obliged to inform the other spouse. If one spouse is the sole owner of the house, the aim of the declaration of family residence is to prevent that spouse from selling, hypothecating or renting the house **without the written consent** of the other spouse. That protection is limited, however, and does not grant any right of ownership or use of the house.

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Declaration of family residence

This protection is not necessary if the spouses are co-owners of the residence or have both signed a lease, because the consent of the other spouse is required in those cases before the family residence can be sold. You can obtain a declaration of family residence form from any registry office. For the telephone number and address of the registry office nearest you, look in the Gouvernement du Québec blue pages of your phone book, under the heading “Justice”, or refer to the keyword section of the government blue pages, if your phone book has one.

An address notice form will be filled out as an additional precaution, and the address of the family residence on the notice will be registered. The spouse who is not the owner will be informed of any legal proceedings, seizure or payment default relating to the residence.

Some notarial contracts include a clause in this regard when a property is being purchased. Since 1982, the dwelling lease form has also included a clause to this effect. For leases prior to that date, a notice to the lessor is sufficient to protect the family residence; a spouse cannot sublet the dwelling or resiliate the lease of the apartment unless the other spouse agrees.

Effects of protection provided by the declaration of family residence

For owners

- **Single-family homes:** Neither spouse in a marriage or civil union may sell or hypothecate the property without the consent of the other spouse.
- **Buildings with fewer than five units:** Once the spouse who is the owner has made his or her declaration, he or she cannot dispose of (sell, rent or hypothecate) the family residence without the consent of the other spouse. If he or she does, the wronged spouse can have the act cancelled or receive financial compensation.
- **Buildings with five units or more:** The other spouse cannot have the act cancelled but is entitled to demand that the new owner agree to rent him or her the premises already occupied by the family for residential purposes.

For tenants

If the spouses in a marriage or civil union are tenants of the residence, neither can terminate the lease or sublet the dwelling without the written consent of the other.

If one of the spouses does this, the transaction can be cancelled or the injured party can demand financial compensation.

Regardless of the circumstances, when the family residence is rented, **the fact that the tenants have divorced or dissolved their civil union does not terminate their lease.** The spouse who stays in the dwelling must notify the landlord, however, within two months of the date that the other spouse left, to say that he or she will now be assuming responsibility for the rent on his or her own.

If neither spouse wants to continue to live in the dwelling, the lease signed nevertheless remains valid and the landlord is entitled to payment of the rent. You will therefore need to make arrangements with the landlord.

For de facto spouses

Protection of the family residence does not apply to de facto spouses.

The only protection that de facto spouses can have is **joint ownership**, if **they co-own the residence.** If they signed a cohabitation contract or agreement and then separate, an action for the partition of property can be brought before the Court in the event of disagreement on how their joint property is to be divided. The publication entitled *Cohabitation Contract*, published by Les Publications du Québec, contains abundant information on this subject. It is sold in bookstores or you can order it from the Les Publications du Québec Website (www.publicationsduquebec.gouv.qc.ca).

Matrimonial regimes and the civil union regime

Property that is not part of the family patrimony is subject to the rules of legal matrimonial regimes, i.e. **the regime of partnership of acquests, the regime of separation of property or the regime of community of property.** Couples that signed a notarial marriage contract under one of these regimes should refer to it after the partition of the family patrimony. For couples in a civil union, the matrimonial regime is the partnership of acquests, unless they chose a different regime.

All couples married after July 1, 1970 who did not sign a notarial marriage contract are subject to the partnership of acquests regime. The ministère de la Justice pamphlet entitled *Your Rights at a Glance—Marriage* can give you information about the different regimes. You can obtain this publication from the ministère de la Justice, most courthouses and Communication-Québec.

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Annulment of a civil marriage

Annulment ends a civil marriage for reasons quite different from those for divorce, and civil annulment must be sought within three years of the date on which the marriage was solemnized. The grounds given must prove the bad faith of the other person. Bad faith means that the person was dishonest in that he or she married although aware of the existence of certain legal obstacles—he or she married before the minimum age required for marriage (16), or bigamy, for example.

Annulment of a civil union

When the conditions required for a civil union are not complied with—for example, if one of the spouses is under the age of 18—it is possible to apply to the Court for the annulment of the civil union.

Annulment of a religious marriage

Divorce puts an end only to the **civil effects** of marriage. Although there is nothing to prevent divorced people from practising their religion, if they wish to remarry in the Catholic Church they need a decree of annulment from an **ecclesiastical court**. It is preferable that the civil aspects be dealt with first. Ideally, this means that a divorce or civil annulment must be pronounced before applying for annulment of a Catholic marriage. For information on how to apply for annulment of a Catholic marriage, check with your local church authorities.

Even though the Catholic Church is opposed to divorce, it does recognize certain grounds for the annulment of a religious marriage: **obstacles to the marriage** (e.g. a spouse wedded when under the minimum age), **formal problems** (e.g. marriage ceremony not in compliance with Church ritual) or **consent problems** (e.g. one of the spouses was forced to marry against his or her will). Other grounds include the spouses' being related to each other, bigamy, non-consummation of the marriage, physical inadequacy (impotence), mental illness, lack of judgment and the inability to fulfill the basic obligations of marriage.

A decree of annulment of a Catholic marriage costs a minimum of \$1000 to \$2000. The amount is determined by the diocese and the process generally takes under two years. The ecclesiastical court renders its decision after hearing the spouses and witnesses.

For the annulment of a marriage solemnized in another religion, it is advisable to consult the religious community concerned.

De Facto Unions

A de facto union is comprised of two persons who live together as spouses without being married or in a civil union. They are not covered by a matrimonial regime.

The *Civil Code of Québec* chose not to give any legal status to couples who live together, no matter how many years they have been together, out of respect for their free choice not to make a commitment.

The legal status of a de facto union is that of two people living together without any rights or duties toward one another. They are not bound by any obligations whatsoever, regardless of how long they have been together.

However, even though the *Civil Code of Québec* does not regulate the status of de facto spouses, there are certain exceptions. For example, a de facto spouse can give consent to the care required by his or her spouse because of the gravity of his or her state of health. Certain government departments and agencies treat de facto spouses the same way they do married spouses or spouses in a civil union. This is the case, in particular, with legislation relating to social aid, legal aid, income tax, the Québec Pension Plan, and compensation for victims of criminal acts and victims of industrial accidents. To avail yourself of the rights recognized by these laws, you should check with the department or agency concerned and find out what its respective requirements are, because they vary according to policies.

De facto spouses do not require a legal proceeding to end their relationship as a couple. However, in cases where parents disagree, they must go before the Court for a judgment on child custody, access rights (rights to visit and take out the children) and **child support**. De facto spouses are not entitled to spousal support.

Cohabitation contracts

Under civil law and most other statutes, living in a de facto union does not confer any rights. De facto spouses are not obliged to see to each other's needs or to take on responsibility for the household. The family residence is not protected as it is with marriage or a civil union. In the event of death, there is a huge difference between the situation of de facto spouses and that of spouses who were legally married or in a civil union. For example, a de facto spouse cannot inherit from his or her partner unless he or she is officially named an heir **in the will**.

When de facto spouses cease living together, in principle neither spouse owes the other anything simply because they cohabited, if no children were born of their union, of course. Hence, it is important for people who decide to live as de facto spouses to provide, in a cohabitation contract, for the management, partition and distribution of property purchased together, should they break up.

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That contract can specify the exact value of the assets of each spouse, include a list of all household property and the name of the person who owns each item, and spell out how the property is to be divided if the spouses stop living together. Each spouse should keep his or her invoices, because they constitute proof of ownership. The cohabitation contract can be prepared by an attorney or a notary, or the parties can prepare it themselves. Then, if they separate, their property will be separated according to the terms of the contract.

The ministère de la Justice pamphlet entitled *De Facto Union* gives more information on this subject. You can obtain a copy from the department, most courthouses and Communication-Québec. *Cohabitation Contract*, an inexpensive brochure published by Les Publications du Québec, provides information that will protect you if you decide to enter into, or you want to continue to live in, a de facto union. *Le Guide pratique de la vie à deux*, which is part of the Protégez-vous Collection, also contains much practical information. It is in the list of reference material at the end of this guide.

Separation agreements

De facto spouses can sign a separation agreement with or without the help of a professional. Separation agreements stipulate such things as how property is to be divided and the other matters resulting from separation. While he or she may not receive the compensatory allowance that a married spouse or a spouse in a civil union may be entitled to, a de facto spouse can invoke grounds of unjustified enrichment. In such cases, it is worthwhile for the spouse to contact a legal advisor to find out exactly what his or her rights are.

Spouses in a de facto union have **no support obligation** toward each other. The support obligation applies only to their children. There is no difference between parents who are married or in a civil union and parents who are de facto spouses as far as their obligations towards their children are concerned. If de facto spouses disagree about child support, the Court will decide for them.

The table below summarizes the different steps involved in proceedings for separation from bed and board, divorce and the dissolution of a civil union.

Summary of Steps Involved

De facto spouses (of the same sex or of the opposite sex)* without children

Cease living together = no legal proceeding
Each spouse keeps the property belonging to him or her
(according to a cohabitation contract or an understanding between them)

De facto spouses (of the same sex or of the opposite sex)* with children

Cease living together = application for child custody
and support = judgment

Married spouses with or without children

Legal Proceedings	=	Result
action for legal separation from bed and board + application for interim relief	+	judgment granting separation corollary relief
use of furniture		partition of family patrimony
use of residence		partition of matrimonial regime
custody of children		
support		support
other relief (use of cottage, etc.		compensatory allowance etc.

Or

Legal Proceedings	=	Result
application for divorce motion for interim relief sought for:	+	divorce judgment corollary relief
infidelity		partition of family patrimony
physical cruelty		partition of matrimonial regime
mental cruelty		custody of children
separated for one year (on the date of the judgment date)		support
other relief (use of cottage, furniture, use of car, etc.)		compensatory allowance etc.
use of residence		
custody of children		
support, etc.		

Dissolution of a civil union – simplified procedure

Legal Proceedings	=	Result
declaration before a notary		dissolution of civil union

Couples in a civil union who do not agree on the terms of their breakup follow the rules applicable to separation from bed and board. If they have dependent children, they follow family mediation rules.

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Division of Time Spent with the Children

As far as the division of time spent with children is concerned (custody, access rights), the main criterion taken into consideration **is the best interests of the children**.

When deciding on custody and how much time each parent spends with the children, the judge considers the following factors:

- Age and sex of the children
- Age and conduct of the parents
- The children's opinion (with children between 10 and 14 years of age, the judge can ask for the children's opinion, without necessarily granting their wishes; with children between 14 and 18, the judge can take their wishes into account)
- Possibility of providing a stable home
- Psychological stability of the children and their parents
- Psychosocial environment (all the factors that contribute to the well-being of the children from a physical and psychological standpoint)
- Emotional ties between the children and each of their parents
- Intellectual development
- Moral or religious upbringing, etc.

Youth centres offer psychosocial services in cases where the partners cannot come to an agreement. In the course of the proceedings, the judge may ask for an expert psychosocial opinion. The expert's assessment enables the judge to evaluate the couple's parenting skills and to decide who should have custody of the children, in addition to being useful in deciding on other measures. The Court is not bound by the recommendations of the expert. At that stage, the parties can hire a private expert if they wish, and any assessment filed before the Court can be contested. Bear in mind that the Court's action is always guided in family matters by the best interests of the children.

Filiation

Filiation is the relationship between a child and his or her parents. From a legal standpoint, filiation must be clearly established so that the rights and obligations stemming from it are recognized. The parents must declare the

child to the Registrar of Civil Status so that information on the child is entered in the register. There are two types of filiation: filiation by blood or by presumption in lieu of it, and adoptive filiation. Couples of the same sex or opposite sex have the same parental rights and obligations as other couples. Read the pamphlet entitled *Your Rights at a Glance-Civil Union*, which is published by the ministère de la Justice and is available on its Website (www.justice.gouv.qc.ca) and at your Communication-Québec office.

Parents' legal rights and obligations

The parents both have the same rights and obligations with respect to the upbringing, supervision and maintenance of their children. They have joint parental authority, regardless of their status. To settle matters stemming from their parental responsibilities, especially with regard to applications for support, access rights (to visit and take out the children) and custody, the spouses must obtain a Court judgment that gives force of law to their decisions.

Access rights

Rights in regard to visiting and taking out the children can be agreed upon amicably by the parents. Their agreement can then be submitted to the Court to give it legal weight. If the spouses are unable to come to an amicable agreement, the judge will settle the matter with the best interests of the children in mind. There are all kinds of possibilities for access. Outings can be supervised or even denied, in the case of children who are incest victims, for example. The judge may decide that it is in the best interests of the children not to see a parent, or only to see him or her under supervision. A number of community organizations can help you find resources that allow you to spend time with your children "on neutral ground". Your nearest CLSC may be able to help in this regard. Sometimes these meetings are held at the family's homes.

Sole custody

With sole custody, the custodial parent has responsibility for the children since they live with that parent on a permanent basis (unless the judge exceptionally decides otherwise). The non-custodial parent has the right to visit and take out the children. The non-custodial parent may, for example, spend every other weekend with the children and half of the Christmas holidays and summer vacation. The terms of the agreement reached by the couple are set forth in the judgment. Bear in mind that the non-custodial parent retains obligations towards the children and has the right to be consulted when important decisions concern them (choice of school, decision to undergo surgery, etc.). Support payments are made to help the parent looking after the children full time to meet the children's material needs.

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Joint custody

With joint custody, the children spend more time with each parent. As a general rule, the parents pay expenses in proportion to the time they spend with their children. Custody is considered shared when each parent spends at least **40% of custody** time with the children. In concrete terms, that means 146 days or more a year. However, shared custody may take several forms. For example, the child may spend one week with one parent and one week with the other. All these rules are indicated in the agreement made by the couple in family mediation. For instance, the dates and times of the beginning and end of the custody week, and special leave and vacations will not be left to chance but will be specified in the agreement ratified by the Court.

Review or amendment of agreements

Decisions concerning child custody and support are never final. A significant change in the situation of either of the parents or in that of the child—a job loss, a salary raise or a move to another city, for example—can justify the review or amendment of the initial agreement. If the former spouses cannot agree, a new application to amend the original judgment must be filed with the Court.

When the parents are in agreement on all the changes to be made to the original judgment, they may request that the Special Clerk of the Court ratify their joint agreement without a hearing before a judge. This simplified procedure has force of law. If, however, the two are in disagreement, they must go before the Court to resolve the matter.

Grandparents' rights

Remember that the separation of the parents in no way cancels the grandparents' right to maintain their relationship with their grandchildren. A mother or father may not, without a serious reason, impede personal relationships between children and grandchildren. It is preferable and in the interests of children that parents do what is necessary to maintain these ties. If the parties are unable to reach an agreement, the matter will be settled by the Court.

The question of the obligation of grandparents to provide their grandchildren with support is discussed on page 42.

Grandparents of modest financial means can obtain the services of a legal-aid attorney for a small fee or free of charge (obtain a copy of the pamphlet entitled *Legal Aid, Ongoing Expertise ... Gratuitous or At Little Cost* at your

legal aid office). To find the phone number of a legal aid office, look in the Gouvernement du Québec blue pages of your phone book, under the heading "Aide juridique" or refer to the keyword section of the blue pages. Grandparents can get help in their efforts to maintain ties with their grandchildren by contacting the following organization, which has access to free mediation:

Association G.R.A.N.D.

12, Park Place, app. 1
Westmount (Québec) H3Z 2K5
Montréal area: (514) 846-0574

Principles of Support

In this chapter, the creditor is the person who receives support and the debtor is the person who pays support.

Above all, it must be understood that each case is different.

Child support

As a rule, where child support is concerned, the law does not set an age limit. The obligation to pay support does not automatically disappear when a child turns 18. Under the *Regulation respecting the determination of child support payments*, support may have to be paid to children who are no longer minors. The situation of children of legal age is dealt with on a **case-by-case basis**.

Children who are of legal age and who live apart from their parents can apply for support from their parents provided the children are full-time students and they meet certain requirements in terms of degree of autonomy and so on. To receive support, they must obtain a Court judgment. Support is not taxable and the Court determines the amount and the payment terms. It is possible for a parent to apply for support on behalf of a child who has reached legal age and still lives with him or her. In that case, support is determined on the basis of the new law and the existing tables in the Québec model for the determination of child support.

Couples who stay together assume responsibility jointly for the financial obligations and duties toward their children. That principle of co-parenthood prevails if they separate. The spouse who does not have physical custody of the children still has obligations toward them and must contribute to their upbringing and maintenance. A parent with sole custody is entitled to support to help cover the cost of seeing to the children's material needs. When the amount of child support to be paid is determined, the parents' anticipated income for the current year must be taken into account, as well as their last income tax returns. Other factors that could alter their income must also be weighed. Each parent must meet the material needs of the

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children in proportion to his or her income. This rule is designed to ensure fairness in the payment of child support.

The basic amount of support is assumed to cover all the children's needs, according to the parents' income and the number of children. It covers, among other things, the following nine basic needs: food, shelter, communication, household upkeep, personal care, clothing, furniture, transportation and recreation. Special needs, such as childcare, post-secondary education and special expenses (medical care) may also increase support.

The ministère de la Justice brochure entitled *Québec Model for the Determination of Child Support Payments* can help in calculating the amount of child support in the event of separation, divorce or the dissolution of a civil union, when the couple has dependent children and both parents live in Québec. However, if one parent lives outside Québec, federal rules for determining support apply.

The brochure gives clear, objective standards aimed at facilitating the determination of child support and at standardizing the calculation procedure. The brochure contains a child support determination form and table as appendices, which are used to calculate how much support should be paid on the basis of the parents' income, the number of children and the type of custody. You can obtain a copy of the brochure from the ministère de la Justice, most courthouses and Communication-Québec. It is also available on the department's Website (www.justice.gouv.qc.ca).

Parents must fill out this form, together or separately, indicating their income and providing certain information that makes it possible to determine each spouse's contribution (for example, the number of children, the proportion of time that the children spend in each spouse's custody and additional expenses for the children's special needs). Family mediation professionals have access to computer software that facilitates the calculation of child support.

Parents can always agree to a different amount of support than the rules indicate. However, they will have to justify the difference to the Court, which will decide whether the difference is reasonable.

Spousal support

Generally speaking, spousal support is for spouses who need it. Under certain special circumstances, that support may be paid for a set period of time, or a compensatory allowance or a lump-sum amount may be awarded. A spouse can apply for support in the case of separation from bed and board, divorce or the dissolution of a civil union, or after a judgment on an application for review is handed down. Spousal support is taxable for the spouse receiving it and deductible for the spouse paying it.

Compensatory allowances

Compensatory allowances are in the form of lump-sum amounts, securities or property given to a former spouse to compensate for his or her exceptional contribution to the enrichment of the other spouse during the marriage or civil union. The contribution is based on the property, services or money provided. It must be proven and a direct link must be demonstrated between that contribution and the enrichment of the other spouse.

In proceedings for separation from bed and board, divorce or annulment of a civil marriage, either spouse can request a compensatory allowance, which will be part of the corollary relief awarded in the judgment. If couples in a civil union have a dependent child, they may request a compensatory allowance when they discuss their separation before a notary or in family mediation.

Compensatory allowances do not have the same objective as support; they are aimed at correcting the balance between patrimonies on the basis of the contribution of one of the spouses. To determine whether a spouse is entitled to spousal support, a compensatory allowance or both, the judge may take the following major factors into account:

- Duration of the marriage or civil union
- Degree of financial autonomy
- Role of each spouse in the union
 - time devoted to caring for the children
 - interruption of career or education
- Inability to return to the work force (disability, illness, age, etc.)

A compensatory allowance does not affect the right to spousal support or the partition of the family patrimony. It is not taxable or deductible for income tax purposes. It may be claimed after the death of the other spouse, in an action for divorce, separation from bed and board, or annulment of marriage or a civil union, or at the time of the dissolution of a civil union.

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Maintenance of the support obligation after death

In the event of death of the person who pays support, the creditor can, under certain conditions and providing the request is made within six months of the person's death, obtain a financial contribution from the succession. The creditor can receive a sum representing 12 months of spousal support payments, six months of child support payments or 10% of the value of the succession, whichever is the lesser amount. All support creditors, including the former spouse of a deceased person, who were not receiving support payments but were entitled to them can also make a request to the succession. This is the case, for instance, of a person who is awaiting a judgment on the payment of support, but whose former spouse dies before the judgment is handed down.

Obligation to support grandchildren

Since October 1, 1996, under the *Civil Code of Québec*, grandparents have not been obliged to support their grandchildren.

Support and last-resort financial assistance

Employment assistance, commonly called "social aid", is financial assistance provided as a last resort. Before applying for that assistance, a person must demonstrate what he or she is entitled to, with respect to support in particular. That means that he or she must try to reach an agreement with his or her spouse or, if necessary, bring the matter before the Court so that it can rule on the amount of any support.

In the case of de facto spouses, only the children are eligible for support. But in the case of married couples or couples in a civil union, the spouses may be entitled to support as well.

It is important to point out that support payments are taken into account in calculating employment assistance benefits. The first \$100 of support is not deducted from the monthly employment assistance payment to families with a child who is under five years of age on the previous September 30. Consult the ministère du Revenu du Québec pamphlet entitled *Support Payments and Last-Resort Financial Assistance*, available from that department and Communication-Québec.

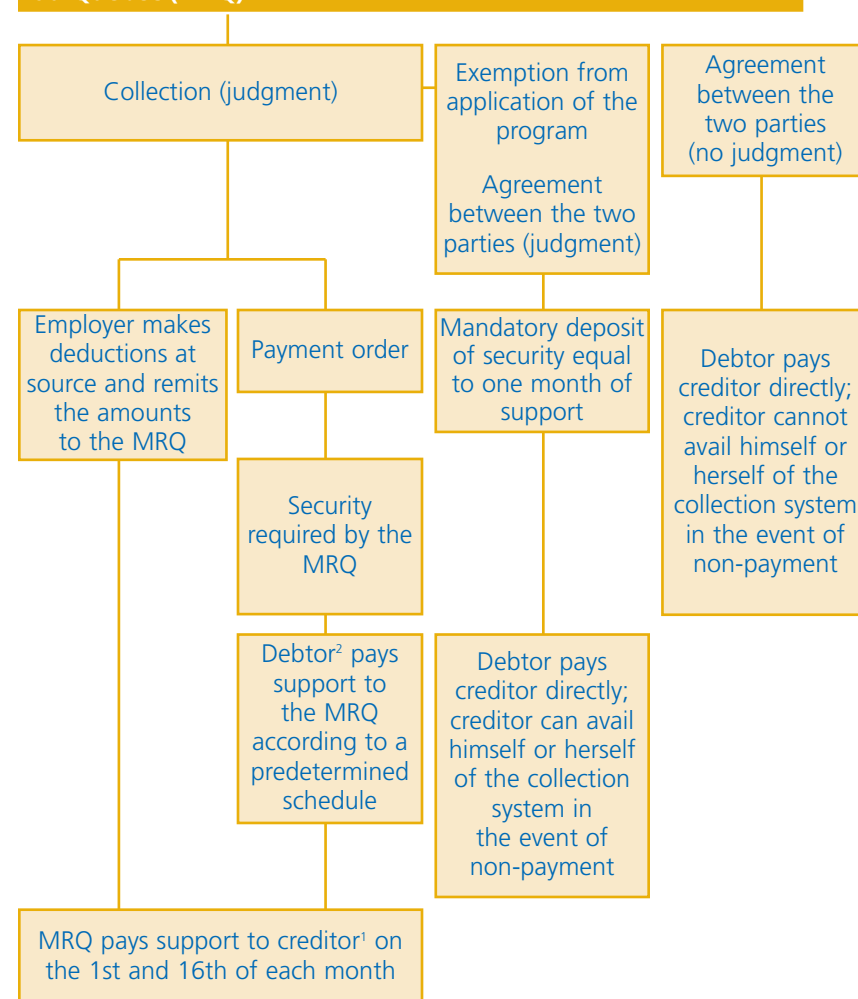
Note:

Applications for employment assistance that do not reveal how much support the applicants are entitled to may be rejected or cancelled.

Collection and Payment of Support

Simplified diagram of support collection and payment steps

Support collection and payment by the ministère du Revenu du Québec (MRQ)



1 Creditor: person receiving support.

2 Debtor: person paying support.

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Support collection program

Main features

The support collection program is universal. It applies to all judgments rendered after December 1, 1995 that grant support for the first time. The ministère du Revenu collects the support from the person who must pay it (the debtor). Then the department pays the support to the person who is to receive it (the creditor). The support is paid in one of the following manners: by deduction at source or by payment order. However, some people may be exempt from application of the program.

Exemption

Generally speaking, the ministère du Revenu collects support from support debtors. Then it pays the support to support creditors. It serves as an intermediary between the parties. The Court may, however, exempt some debtors from the obligation to pay support to the department. Debtors then send the support directly to creditors. Debtors and creditors must agree to this and jointly file their application with the Special Clerk, who must be certain that the parties have given their consent in a free and enlightened manner. Debtors who are exempt from paying support to the department must provide and maintain security, which may be a sum of money or a commitment by a financial institution to pay the sum to the department on demand. A commitment may be security or a letter of guarantee. The security guarantees the payment of support for one month, and the debtor has 30 days as of the date that the judgment is rendered to remit the security to the department.

Couple that wish to apply for an exemption without the help of a professional can use the model for a motion available at courthouse offices and on the ministère de la Justice's Website (www.justice.gouv.qc.ca). They should also read the ministère du Revenu pamphlet entitled *Support-Payment Collection System of the Ministère du Revenu, Application for Exemption*, which can be obtained from that department. It clearly explains what you should know before opting for that solution.

Person receiving support

Payments

The ministère du Revenu pays support to the creditor twice a month, on the 1st and 16th of the month. The payments are made by cheque. They can also be paid by direct deposit in the creditor's bank account.

Advances

Under certain conditions, the ministère du Revenu can advance the amount of support to the creditor. Advances are usually made for a period not exceeding three months. The maximum amount is \$1500. The advance can be paid only if the ministère du Revenu is certain to recover from the debtor the money it advances.

Unpaid support

If the ministère du Revenu collects the support, the creditor need not take any action. The department notes that the support owed has not been paid. It takes the required steps to ensure payment.

Child support not taxable or deductible

On May 1, 1997, the tax treatment of child support changed. In principle, child support is not taxable or deductible when awarded for the first time, according to a judgment rendered, or a written agreement signed, after **April 30, 1997**. Debtors may not deduct child support from their income, while creditors do not include it in their income. In general, only child support payable after April 30, 1997 is subject to this tax treatment.

Support paid for spouses or former spouses must be included in the creditor's income, and the debtor may deduct it from his or her income, even if the support was established after April 30, 1997. Note that if the judgment or agreement does not distinguish between child support and spousal support, the total amount is considered to be child support. The support is therefore deductible for the debtor and taxable for the creditor.

Child support is also deductible for the debtor and taxable for the creditor in the following situation. The debtor and the creditor jointly file the form entitled *Election to have new tax rules applied to child support* (TP-312). They indicate on the form a date after April 30, 1997 and that they want the child support to receive that tax treatment as of that date. However, they **do not change** the amount of the support. The child support will then not be taxable or deductible as of that date. You can obtain Form TP-312 from the office of the ministère du Revenu in your region or on the department's Website (www.revenu.gouv.qc.ca).

Form T1157, *Election for child support payments*, of the Canada Customs and Revenue Agency, must also be filled out. It can be found on the Agency's Website (www.ccra-adrc.gc.ca).

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Application of the support collection program in regard to judgments rendered before December 1, 1995

If the debtor was already paying support when the law came into effect on December 1, 1995, in principle the collection program does not apply to him or her or to the creditor. However, it is possible for them to avail themselves of the program in one of the following situations:

- The parties file a joint application. The application must be submitted at the office of the Clerk at the courthouse where the judgment was handed down or at the office of the Clerk at the courthouse in the district where the creditor lives.
- The creditor fails to receive the support owed under a judgment. The creditor must apply to the Clerk at the courthouse where the judgment was handed down, or the Clerk at the courthouse in the district where he or she lives.

In all cases, the form entitled *Application to the Court Clerk concerning Section 99, Paragraph (1) or (2), of the Act to Facilitate the Payment of Support* (SJ-765) must be submitted. It is available at the courthouse.

Questions about the support collection program

Contact the ministère du Revenu at the following numbers:

Québec City area: (418) 652-4413
Elsewhere in Canada: 1 800 488-2323
Teletype machine: see page 64

For any problem concerning the collection of support, first contact the officer in charge of your file. If the response is unsatisfactory, contact the office of the executive director of support collection, at the following numbers:

Québec City area: (418) 652-6704
Elsewhere in Québec: 1 888 400-6528, ext. 6704

Collection of support when the debtor no longer lives in Québec

If the debtor regularly pays the creditor support, the procedure already established by the ministère du Revenu for support payment can continue to apply.

If the debtor does not pay support regularly, the support must be collected under the *Act respecting reciprocal enforcement of maintenance orders* when an agreement exists with the province, territory or state in the United States where the debtor resides. The ministère de la Justice acts as intermediary between the ministère du Revenu and the agency responsible for seeing to such procedures in the locality contemplated by the agreement. If the debtor does not live in another province or territory of Canada, or in the United States, the support creditor must consult a legal advisor.

Obtain a copy of the ministère du Revenu du Québec brochure entitled *Collection of Support: When the Debtor or Creditor Resides Outside Québec* by contacting your nearest Communication-Québec office. The brochure is also available on the ministère du Revenu's Website (www.revenu.gouv.qc.ca). If you need more information, you can also contact the Direction des communications of the ministère de la Justice:

Édifice Louis-Philippe-Pigeon
1200, route de l'Église, 6^e étage
Sainte-Foy (Québec) G1V 4M1
Telephone: (418) 643-5140 or (418) 644-3947
Fax: (418) 646-4449
Website: www.justice.gouv.qc.ca

Review of a judgment granting support

If the situation of either of the parents or of the child changes, or if circumstances warrant, the initial judgment granting support can be reviewed. A new judgment must be rendered in order to amend an earlier judgment granting support. The ministère du Revenu does not have the power to amend judgments.

Simplified procedure

A written application to vary support, signed by both former spouses, can be submitted at the office of the Special Clerk of the Superior Court at the courthouse. The Special Clerk has the power to ratify an agreement only if the parents are in perfect agreement on all points, including custody, support (whether increased or decreased) and access rights. In such a case, the former spouses are not obliged to go before the Court and the decision rendered must be enforced. To render a decision, the Special Clerk must ensure that the children's interests are met and that the parties have consented in a free and enlightened manner.

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Indexation of support

The *Civil Code of Québec* provides for the automatic indexation of support on January 1 of each year, in keeping with the annual pension index determined under the *Act respecting the Québec Pension Plan* (1.5% in 1997, 1.9% in 1998, 0.9% in 1999, 1.6% in 2000, 2.5% in 2001, 3% in 2002 and 1.6% in 2003). Automatic indexation applies to all judgments granting support that were handed down after January 1, 1988, unless the judge specified otherwise in his or her judgment.

End of collection and payment of child support

The following can end the payment of child support:

- The date indicated in the judgment granting child support
- The death of the support debtor
- The resumption of cohabitation of the spouses (under certain special conditions)
- A new judgment cancelling support

Names

Changing names

Wife's name

Women married before April 2, 1981 often use their husband's last name. After a marriage breakup or their spouse's death, some women prefer to revert to their maiden name. No legal proceeding is necessary to change back to the name you were born with, because this is the name that has always appeared in Québec's official civil status registers. You need only notify all government agencies and private organizations with which you deal. In some cases, that can mean applying for new cards or licences (social insurance card, health insurance card and driver's licence, for example). Communication-Québec can assist you with this. Note that, since April 2, 1981, women who marry are obliged to keep their maiden name in exercising their civil rights.

Children's names

The Court is the only body that can authorize a change in a child's name in the case of a change in filiation (for example, following a claim, denial or

acknowledgment of maternity or paternity), abandonment by the father or the mother, or loss of parental authority. All other cases fall within the jurisdiction of the Registrar of Civil Status, which can authorize a change in the family name or given name of a person who has reached legal age. The name change is made provided the reasons given are considered serious, and administrative fees are paid. If one parent wishes to add his or her family name to that declared in the act of birth of his or her child, that parent must apply to the Registrar of Civil Status. For example, following a divorce or the dissolution of a civil union, Jane Smith applies to have her name added to that of her daughter, so that her daughter will be known as Julie Smith-Jones. In that case, the other parent must be notified but his or her consent is not required. However, to remove the name of one parent, the consent of the other parent is usually required, unless it can be proved that there are compelling reasons for removing the name.

For information on name changes, contact:

In Québec:

Registrar of Civil Status Service à la clientèle

205, rue Montmagny
Québec (Québec) G1N 2Z9
Québec City area: (418) 643-3900
Elsewhere in Québec: 1 800 567-3900
Fax: (418) 646-3255
Website: www.etatcivil.gouv.qc.ca

In Montréal:

Registrar of Civil Status Service à la clientèle

2050, rue De Bleury, 6^e étage
Montréal (Québec) H3A 2J5
Montréal area: (514) 864-3900
Elsewhere in Québec: 1 800 567-3900
Fax: (514) 864-4563
Website: www.etatcivil.gouv.qc.ca
E-mail: etatcivil@dec.gouv.qc.ca

You can also contact the Registrar of Civil Status about any other matter relating to civil status or consult the Registrar's Website (www.etatcivil.gouv.qc.ca).

The ministère de la Justice publishes a pamphlet entitled *Filiation*, which can be obtained from the department, most courthouses and Communication-Québec. The Registrar of Civil Status publishes pamphlet entitled *Change of Name and Designation of Sex*, which can also be obtained from Communication-Québec.

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Presumption of paternity and maternity

If a woman has a baby during her marriage or within 300 days after its dissolution or annulment, the husband is presumed to be the child's father. For example, if the child is born only a few months after his or her mother's divorce is handed down, the legal presumption is that the former spouse is the baby's father, even if the child may in fact have been born of a new de facto union. To allow the biological father to exercise his parental authority and rights, he must have his paternity recognized in the *Declaration of birth*, which he signs and which is registered as the act of birth in the Civil Status Register, or by a Court judgment. When a child is born within 300 days following a marriage's dissolution or annulment but after a mother's remarriage, the mother's new spouse will be considered the father of the child. When parents separate, these delicate matters can be contested, which can affect the payment of child support, among other things.

With de facto spouses of the same sex or opposite sex, paternity is recognized via the *Declaration of birth*, signed by the child's parents at the hospital or birth centre, and entered in the Québec Civil Status Register.

Financial and Tax Consequences

of Separation, Divorce and the Dissolution of a Civil Union

The financial status of the spouses changes a great deal with separation, divorce or the dissolution of a civil union. It is important for each spouse to evaluate the financial impact of the family reorganization. Many basic family expenses are doubled when a couple breaks up. Each spouse has to absorb his or her share of additional expenses for housing, transportation, income tax, retirement savings and so on, even though his or her income generally does not increase as a result of the separation. It may be a good idea for the spouses to consult a financial advisor so that they can get through this stage relatively unscathed, and minimize the impact on the harmony of future relations between the former spouses and the children. A financial advisor's advice will help the spouses arrive at solutions to these unanticipated expenses.

The ministère du Revenu publishes a brochure entitled *The Tax Effects of Separation and Divorce*, which can be obtained from the department.

Taxes

Partition of property and of the family patrimony

When former spouses or spouses in a civil union partition their property between them, it may be necessary to consult an expert regarding the tax impact of the property transfers. For example, what would the capital gains tax exemption be in the case of a secondary residence? In the case of a multiple unit residential property, was any tax paid on the income derived from it before the transfer? All of these questions must be answered in order to avoid problems that could cause relations between the former spouses to deteriorate. Bear in mind that several types of investments, such as RRSPs, are taxable when cashed in.

Personal tax credits for source deduction purposes

A change in family status can lead to changes in the amount of federal and provincial taxes to be deducted from your pay. Filling out the *Source deduction return* (TP-1015.3) and the *Personal tax credit return* (TD-1) will let the employer know what changes to make.

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In addition, people who receive taxable support payments can apply for extra taxes to be deducted at source, by completing Form TP-1015.3 or Form TP-1017, *Request to Have Additional Income Tax Withheld*. This will help them avoid having to pay additional taxes when they file their income tax returns.

The ministère du Revenu du Québec and the Canada Customs and Revenue Agency can give you complete information on these changes (Form T1157, *Election for Child Support Payments*, is available on the Agency's Website (www.ccr-aadrc.gc.ca). See the Gouvernement du Québec blue pages of the phone book, under the heading "Revenu", and the Government of Canada blue pages of the phone book, under the heading "Canada Customs and Revenue Agency". You can also consult the keyword section of the government blue pages if your phonebook has one. In general, the employer's human resource department has these forms.

Government of Canada goods and services tax/harmonized sales tax (GST/HST) credits

GST/HST credits compensate people and families with low incomes for all or part of the GST and HST that they pay. To receive the credit, you must apply for it when filing an income tax and benefit return, even if you have no income to declare. Payments are made by cheque issued in the name of one of the spouses or by direct deposit in his or her account. In the event of separation, divorce or the dissolution of a civil union, you should inform the Canada Customs and Revenue Agency as soon as possible in writing, since the amount of the credit to which you are entitled will be modified as of the first quarter following your change in civil status. A 90-day period must elapse between the date of the separation and the application for a change in civil status. If you are the spouse who did not apply for the credit on your income tax and benefit return, you must apply for the change in writing at your tax centre in order to begin to receive your own credit.

Québec sales tax (QST) credit

Only one of the two spouses may request the QST tax credit. This sum is normally sent in two payments: one in August and one in December. The former spouses must agree on the division of the QST amount during the year of their separation, since the total cheque will depend on the income tax return of the previous year. For all special cases (separation, divorce and so on), you should contact the Service de l'impôt des particuliers of the ministère du Revenu:

Québec City: (418) 659-6299 (1)
Montréal: (514) 873-2600 A
Elsewhere in Québec: 1 800 267-6299

You can also contact the Canada Customs and Revenue Agency (Credit Division) for information on this subject. Look in the Gouvernement du Québec blue pages of the phone book, under the heading "Revenu", and in the Government of Canada blue pages, under the heading "Canada Customs and Revenue Agency". In regard to the GST, call 1 800 959-1954.

Teletype machine: see page 64

Financial undertaking related to sponsorship of an immigrant spouse

Under Québec and Canadian immigration laws, separation, divorce and the dissolution of a civil union have no effect on the obligations assumed in an undertaking contract for the sponsorship of a married or de facto spouse. The undertaking begins when the sponsored person obtains his or her right to settle in Canada and is in force for the time indicated in the sponsorship contract. In the case of a spouse, the period is three years. **Note that any amount of last-resort assistance paid to a sponsored person will be claimed from the person sponsoring him or her.**

Government Programs

Partition of employment income registered with the Québec Pension Plan (QPP)

Employment income registered with the Québec Pension Plan is part of the family patrimony.

Income during the period of cohabitation is automatically partitioned equally between the two spouses in the following situations:

- Divorce
- Legal separation
- Annulment of a civil marriage
- Dissolution of a civil union
- Annulment of a civil union

However, the former spouses may renounce the partition by:

- Clearly indicating this in the Court judgment
- Clearly indicating this in the notarized joint declaration resolving the consequences of the dissolution of a civil union
- A notarial act registered in Québec in the year following the Court judgment

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Making an informed decision

The decision whether to partition the employment income registered with the Québec Pension Plan can have a major impact on the quality of a person's retirement. It is therefore important to be fully aware of the effects of the partition before making a decision. New registered income may entitle you to a retirement pension, a disability pension or survivor's benefits. It can also have an effect on the pensions currently being paid.

To help the couple make an informed decision, the Régie des rentes du Québec offers a simulation option. This is a fast, free service. Note, however, that the other spouse must give his or her consent if:

- legal proceedings have not yet been instituted
- you are in the process of obtaining a notarized declaration of the dissolution of a civil union, or
- you are a de facto spouse

To request a simulation, obtain a copy of the *Application for simulated partition of employment earnings* form available from your mediator or the Régie des rentes du Québec. You can also download it from the Website of the Régie des rentes.

De facto unions

Under certain conditions, de facto spouses who separated after June 30, 1999 can also partition the employment income registered with the Québec Pension Plan during their union. They must submit a joint application to the Régie des rentes and have lived as a married couple for three years, or for one year if they had or adopted a child together.

Note that, under certain conditions, spouses who lived together before marrying or entering into a civil union can also partition the employment income registered during that period if their judgment takes effect after June 30, 1999.

The following judgments, like the notarized joint declaration of dissolution of a civil union, can take the place of an application if they mention the partition for that period:

- Judgment of divorce
- Judgment of separation from bed and board
- Judgment of annulment of a civil marriage
- Judgment of dissolution of a civil union
- Judgment of annulment of a civil union

If they do not, the spouses must file a joint application in writing.

Civil unions

Spouses of the same sex or the opposite sex can now enter into a new form of union, namely, a civil union. This union has the same legal effect as marriage. People who enter into a civil union therefore have the same rights and obligations as spouses and are subject to the partition of the family patrimony if they separate.

The new provision stipulates that a civil union can be dissolved through a notarized declaration of the two spouses, without the intervention of the Court. The spouses must first resolve all the consequences of the dissolution of their union before the notary can register their agreement. If they do not agree or if they have had or adopted a child together, they must go before the Court.

The former spouses in a civil union are subject to the same rules as former married spouses in regard to the partition of employment income registered with the Québec Pension Plan.

For more information

Obtain from the Régie des rentes du Québec the brochure entitled *If You Separate*. It is available on the Website of the Régie des rentes and in Communication-Québec offices. You can also contact the Régie for a copy:

Régie des rentes du Québec

Case postale 5200
Québec (Québec) G1K 7S9
Québec City area: (418) 643-5185
Montréal area: (514) 873-2433
Toll free: 1 800 463-5185
Website: www.rrq.gouv.qc.ca
Teletype machine: see page 64

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Partition of credits accrued under CARRA pension plans

The Commission administrative des régimes de retraite et d'assurances (CARRA) administers pension plans for approximately 494 000 employees of the public and parapublic sectors in Québec (teachers, public servants, nurses, etc.). The largest of these plans is RREGOP, a pension plan for employees of the government and of public agencies.

The value of benefits accrued under these pension plans are part of the family patrimony and thus can become the object of an application for partition in the event of divorce, separation from bed and board, dissolution of a civil union, or annulment of a civil marriage or civil union. However, to be recognized as spouses according to the Canadian tax rules, people in a civil union must have lived as husband and wife for at least a year. To find out the value of these benefits, simply submit an application to CARRA on the form entitled *Application for a Statement of Benefits*. You can request a statement of benefits any time after Court proceedings have been instituted. There can be no partition of benefits if their value has not been established in advance by CARRA. Couples who have not instituted legal proceedings but who are in family mediation with an accredited family mediator can also apply for a statement of benefits from CARRA.

The administrative fee charged by CARRA for a statement of benefits is \$219. This fee, which is indexed annually on January 1, is divided equally between the two parties, unless they or the Court decides otherwise.

For more information, read the brochure entitled *Partition of Family Patrimony*, published by CARRA. You can order it directly from CARRA or consult it on CARRA's Website:

Commission administrative des régimes de retraite et d'assurances Service à la clientèle

475, rue Saint-Amable, 5^e étage
Québec (Québec) G1R 5X3
Québec City area: (418) 643-4881
Elsewhere in Québec: 1 800 463-5533
Website: www.carra.gouv.qc.ca

Canada Child Tax Benefit (CCTB) and Québec family allowance

After a de facto separation, separation from bed and board, divorce or the dissolution of a civil union, recipients of the Child Tax Benefit must notify the Canada Customs and Revenue Agency of their change in civil status. You must wait **90 days** after a separation or the dissolution of a civil union before applying for a change in civil status. To apply for that change, you fill out Form RC65, *Marital Status Change*, which you can obtain from the Canada Customs and Revenue Agency. This procedure is necessary because the change in your family situation means that the Child Tax Benefit must be recalculated. Here is the contact information for the Canada Customs and Revenue Agency that you can use to obtain the form:

Tel.: 1 800 959-3376
Website: www.ccr-aadrc.gc.ca

The Canada Customs and Revenue Agency relays the pertinent information to the Régie des rentes du Québec, which then recalculates your family allowance on the basis of your new family situation.

Shelter allowance

Low-income families (workers and income-security recipients) with at least one dependent child, and people 55 years of age and older may be entitled to a shelter allowance if their housing expenses exceed 30% of their family income. The Société d'habitation du Québec, in collaboration with the ministère du Revenu du Québec, publishes a pamphlet entitled *The Shelter Allowance*. It can be obtained from the Société d'habitation du Québec and Communication-Québec.

Société d'habitation du Québec

Québec City area: (418) 643-7676
Elsewhere in Québec: 1 800 463-4315
Website: www.shq.gouv.qc.ca

Revenu Québec

Québec City area: (418) 652-7020
Montréal area: (514) 864-7020
Elsewhere in Québec: 1 888 511-2558
Website: www.mrq.gouv.qc.ca
Teletype machine: see page 64

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Prescription drug insurance

After a breakup, since the couple is no longer cohabiting, prescription drug insurance coverage must be reviewed. In many cases, the change in domicile cancels the family coverage provided. Since this means that one of the parties is no longer covered, it may be necessary to enroll in the government prescription drug insurance plan administered by the Régie de l'assurance maladie du Québec.

Health insurance card

As soon as a person's status changes—whether after a divorce, de facto separation or separation from bed and board—he or she must notify the Régie de l'assurance maladie by phone. The Régie will note the change in family status in its computer records and will make the address or civil status change.

Québec City area: (418) 646-4636
Fax: (418) 643-6330
Montréal area: (514) 864-3411
Fax: (514) 873-5951
Elsewhere in Québec: 1 800 561-9749
Teletype machine: see page 64
Website: www.ramq.gouv.qc.ca
E-mail: services.beneficiaires@ramq.gouv.qc.ca

Parental Wage Assistance (PWA) program

The Parental Wage Assistance (PWA) program of the ministère de l'Emploi et de la Solidarité sociale adds financial assistance to the employment income of low-income families with a dependent child. To obtain the application form or more information, contact the PWA office in your region. Resource material is also available at Communication-Québec offices. To contact the ministère de l'Emploi et de la Solidarité sociale:

Québec City area: (418) 643-4721
Elsewhere in Québec: 1 888 643-4721
Website: www.mess.gouv.qc.ca

For any information about employment assistance (social aid) benefits, contact the ministère de l'Emploi et de la Solidarité sociale.

Retirement pensions

Following a separation or divorce, it is important to notify the departments and agencies from which you receive pensions, since, in certain cases, the breakup can result in a change in the amount to which you are entitled. You must notify the Régie des rentes du Québec (see page 55), or Human Resources Development Canada (the phone number is 1 800 277-9914; its Website is at www.hrdc-drhc.gc.ca; for the teletype machine number, see page 64).

French, American and other pensions

In the event of a legal separation or divorce, you may be entitled to an American social security pension as a divorced former spouse. In all cases, certain requirements must be met in regard to, for example, your former spouse's eligibility for a U.S. retirement or disability pension, your age and the number of years you were married. Québec administers several social security agreements (with France, for example) that allow former spouses who have not remarried to claim a share of the survivor's pension. To find out if you are eligible or to submit a pension application, contact:

Ministère des Relations avec les citoyens et de l'Immigration Direction des ententes de sécurité sociale

454, place Jacques-Cartier, 4^e étage
Montréal (Québec) H2Y 3B3
Montréal area: (514) 873-5030
Elsewhere in Québec: 1 800 565-7878
Fax: (514) 873-1811
Website: www.immigration-quebec.gouv.qc.ca
E-mail: ententes@mrci.gouv.qc.ca

Other Important Points

Debts

Married spouses or spouses in a civil union are jointly responsible for any debts incurred during their union in order to pay for basic family needs (food, rent, furniture, cars for family use, etc.). If they separate, they are still responsible for paying these debts. If they fail to do so, they can be prosecuted, together or separately, regardless of the matrimonial regime under which they were married or which spouse contracted the debt, provided the debt was incurred to cover family needs.

Marriage contracts

Following a judgment of separation from bed and board, the spouses remain bound by certain clauses in their marriage contract. Gifts, either inter vivos or mortis causa, made under the testamentary clause that stipulates that the succession devolves to the surviving spouse may be cancelled, amended or maintained by the judge. Gifts between spouses by marriage contract, in the form of an insurance policy for instance, remain valid. The details of each contract must be checked. Divorce or the death of a spouse terminates the marriage contract.

Civil union contracts

Civil union contracts are subject to the rules applicable to marriage contracts, adapted as necessary.

Wills

If a will was made by the parties during their union and one of the spouses wishes to change it, a new will must be drawn up. Divorce or the dissolution of a civil union cancels bequests made to a married spouse or a spouse in a civil union. However, after a divorce, separation or the dissolution of a civil union, it is advisable to make a new will. It is important to know that a legal separation, a divorce and the dissolution of a civil union do not revoke the testamentary clause of a marriage or civil union contract. If you do not want your former spouse to inherit all your property, it is important to draw up your will as soon as possible.

Insurance policies

Life insurance or other kinds of insurance policies protect the surviving spouse and children in the event of death. Some of those insured decide to retain the same beneficiary. However, after a judgment of divorce, of dissolution of a civil union, or of annulment of a civil marriage or a civil union, it is recommended that you contact your insurance company in order to confirm the beneficiary's name you want indicated, since the judgment cancels any designation of a spousal beneficiary.

Suggestions for Further Reading

Here are the publications available from Communication-Québec or directly from the departments and agencies that publish them:

Commission des services juridiques

- *Legal Aid, Ongoing Expertise ... Gratuitous or At Little Cost*

Communication-Québec (visit the portal at www.gouv.qc.ca)

- *Change of Address* (electronic guide)
- *When a Couple Separates* (electronic guide)

Ministère de la Justice du Québec (www.justice.gouv.qc.ca)

- *Family Mediation, Negotiating a Fair Agreement*
- *Family Patrimony*
- *Joint Application for Divorce on Draft Agreement*
- *Filing a joint motion for exemption according to section 3 of the Act to facilitate the payment of support* (model available)
- *Québec Model for the Determination of Child Support Payments—Answers to Your Questions—Guide Including Calculation Table and Facsimile of Child Support Determination Form*
- *Your Rights at a Glance—Civil Union*
- *Your Rights at a Glance—De Facto Union*
- *Your Rights at a Glance—Filiation*
- *Your Rights at a Glance—Marriage*
- *Your Rights at a Glance—Separation and Divorce*

You can also consult the Website of the ministère de la Justice at www.justice.gouv.qc.ca (publications) for the reports by the follow-up committee created when the ministère de la Justice family mediation program came into effect.

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Ministère de l'Emploi et de la Solidarité sociale (www.mess.gouv.qc.ca)

- *Apport - Aide aux parents pour leurs revenus de travail*

Ministère du Revenu du Québec (www.revenu.gouv.qc.ca)

- *Collection of Support: When the Debtor or Creditor Resides Outside Québec*
- *Support Payments and Last-Resort Financial Assistance*
- *The Collection of Support Payments by the Ministère du Revenu du Québec—Exemption Application* (available from the ministère du Revenu only)
- *The Tax Effects of Separation and Divorce*

Régie des rentes du Québec (www.rrq.gouv.qc.ca)

- *If You Separate; Important Information for Married and De Facto Spouses*

Registral of Civil Status (www.etatcivil.gouv.qc.ca)

- *Birth*
- *Change of name and of designation of sex*
- *Le Directeur de l'état civil : une gamme de services indispensables*
- *Marriage*
- *Request for a certificate or a copy of act*

Société d'habitation du Québec (www.shq.gouv.qc.ca)

- *The Shelter Allowance*

Reference material not available at Communication-Québec

Health Canada

- *Because Life Goes On: Helping Children and Youth Live with Separation and Divorce. A Guide for Parents*

The guide is available in PDF format at
www.hc-sc.gc.ca/hppb/sante-mentale/pms/index.html

Office de la protection du consommateur

Protégez-vous Collection (www.pv.qc.ca)

- *Le guide pratique de la vie à deux* (\$5.95)

Reference material sold by Les Publications du Québec

- *Femmes et famille – suivez le guide* (\$11.95)
- *La trousse succession – Mes volontés* (\$16.95)
- *Le contrat de vie commune* (\$5.95)

To order by mail:

Québec City area: (418) 643-5150
Elsewhere in Québec: 1 800 463-2100
Website: www.publicationsduquebec.gouv.qc.ca

Contact Communication-Québec for the location of Les Publications du Québec distributors in your area.

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Services for the Deaf or Hard-of-hearing Who Have a Teletype Machine



The following numbers are for the sole use of the deaf or hard-of-hearing who have a teletype machine.

Canada Customs and Revenue Agency
Throughout Québec: 1 800 665-0354

Communication-Québec
Montréal area: (514) 873-4626
Elsewhere in Québec: 1 800 361-9596

Communication-Canada
1 800 465-7735

Health Canada
Throughout Canada: 1 800 267-1245

Human Resources Development Canada
1 800 255-4786

Régie de l'assurance maladie du Québec
Québec City area: (418) 682-3939
Elsewhere in Québec: 1 800 361-3939

Régie des rentes du Québec
Throughout Québec: 1 800 603-3540

S.O.S. Violence conjugale
Montréal area: (514) 873-9010

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a full range of information
on Québec government
activities

On-line at:

www.gouv.qc.ca



THE QUÉBEC GOVERNMENT ON-LINE

Québec

Québec Government Portals on the Internet

To access Québec government information available over the Internet, simply visit the Québec government national portal (www.gouv.qc.ca) or one of the following regional portals:

Communication-Québec Offices

Baie-Comeau

625, boul. Laflèche, bureau 701
Baie-Comeau (Québec) G5C 1C5
(418) 295-4000
Regional portal: www.cotenord.gouv.qc.ca

Drummondville

270, rue Lindsay, RC 16
Drummondville (Québec) J2B 1G3
(819) 475-8777
Regional portal: www.centreduquebec.gouv.qc.ca

Gaspé

96, montée Sandy-Beach, 1^{er} étage, bureau 1.02
Gaspé (Québec) G4X 2W4
(418) 360-8000
Regional portal: www.gaspesieillesdelamadeleine.gouv.qc.ca

Gatineau

170, rue de l'Hôtel-de-Ville, RC 120
Hull (Québec) J8X 4C2
(819) 772-3232
Regional portal: www.outaouais.gouv.qc.ca

Granby

77, rue Principale, RC 22
Granby (Québec) J2G 9B3
(450) 776-7100
Regional portal: www.monteregie.gouv.qc.ca

Îles-de-la-Madeleine

224A, route Principale, C. P. 340
Cap-aux-Meules (Québec) G0B 1B0
(418) 986-3222
Regional portal: www.gaspesieillesdelamadeleine.gouv.qc.ca

Joliette

Édifce Louis-Cyr
450, rue Saint-Louis, RC 20
Joliette (Québec) J6E 2Y8
(450) 752-6800
Regional portal: www.lanaudiere.gouv.qc.ca

Laval

1796, boul. des Laurentides, Vimont
Laval (Québec) H7M 2P6
(514) 873-2111
Regional portal: www.laval.gouv.qc.ca

Longueuil

118, rue Guilbault, RC 101
Longueuil (Québec) J4H 2T2
(514) 873-2111
Regional portal: www.monteregie.gouv.qc.ca

Montréal

Place Dupuis
800, boul. De Maisonneuve Est, RC 2
Montréal (Québec) H2L 4L8
(514) 873-2111
Regional portal: www.montreal.gouv.qc.ca

Québec

400, boul. Jean-Lesage, bureau 105
Québec (Québec) G1K 8W1
(418) 643-1344
Regional portal: www.capitale-nationale.gouv.qc.ca

Rimouski

337, rue Moreault
Rimouski (Québec) G5L 1P4
(418) 727-3939
Regional portal: www.bassaintlaurent.gouv.qc.ca

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Rouyn-Noranda

255, avenue Principale, RC 01
Rouyn-Noranda (Québec) J9X 7G9
(819) 763-3241
Regional portal: www.abitibitemiscamingue.gouv.qc.ca

Saguenay

3950, boul. Harvey
Jonquière (Québec) G7X 8L6
(418) 695-7850
Regional portal: www.saguenaylacsaintjean.gouv.qc.ca

Saint-Félicien

1209, boul. Sacré-Cœur, C. P. 7
Saint-Félicien (Québec) G8K 2P8
(418) 679-0433
Regional portal: www.saguenaylacsaintjean.gouv.qc.ca

Saint-Georges

11287, 1^{re} Avenue Est, bureau 100
Saint-Georges (Québec) G5Y 2C2
(418) 226-3000
Regional portal: www.chaudiere-appalaches.gouv.qc.ca

Saint-Hyacinthe

600, avenue Sainte-Anne
Saint-Hyacinthe (Québec) J2S 5G5
(450) 778-6500
Regional portal: www.monteregie.gouv.qc.ca

Saint-Jean-sur-Richelieu

109, rue Saint-Charles
Saint-Jean-sur-Richelieu (Québec) J3B 2C2
(450) 346-6879
Regional portal: www.monteregie.gouv.qc.ca

Saint-Jérôme

Galeries des Laurentides
500, boul. des Laurentides, 1503-C
Saint-Antoine (Québec) J7Z 4M2
(450) 569-3019
Regional portal: www.laurentides.gouv.qc.ca

Salaberry-de-Valleyfield

83, rue Champlain
Salaberry-de-Valleyfield (Québec) J6T 1W4
(450) 370-3000
Regional portal: www.monteregie.gouv.qc.ca

Sept-Îles

456, avenue Arnaud, RC 01
Sept-Îles (Québec) G4R 3B1
(418) 964-8000
Regional portal: www.cotenord.gouv.qc.ca

Sherbrooke

200, rue Belvédère Nord, RC 02
Sherbrooke (Québec) J1H 4A9
(819) 820-3000
Regional portal: www.estrie.gouv.qc.ca

Thetford Mines

183, rue Pie-XI
Thetford Mines (Québec) G6G 3N3
(418) 338-0181
Regional portal: www.chaudiere-appalaches.gouv.qc.ca

Trois-Rivières

100, rue Laviolette, RC 26
Trois-Rivières (Québec) G9A 5S9
(819) 371-6121
Regional portal: www.mauricie.gouv.qc.ca

Val-d'Or

1212, 8^e Rue
Val-d'Or (Québec) J9P 3N7
(819) 354-4444
Regional portal: www.abitibitemiscamingue.gouv.qc.ca

Use the following number if you are making a long-distance call:
1 800 363-1363 (toll-free).

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Montréal area: (514) 873-4626
Elsewhere in Québec: 1 800 361-9596

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- Montréal: (514) 866-2490
- Québec: (418) 529-0301
- Laval: (450) 686-2958
- Longueuil: (450) 468-2609
- Elsewhere in Québec: 1 800 361-8495

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