



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 181
(1998, chapter 5)

**An Act to amend the Civil Code and
other legislative provisions as regards
the publication of personal and movable
real rights and the constitution of
movable hypothecs without delivery**

**Introduced 28 November 1997
Passage in principle 10 December 1997
Passage 31 March 1998
Assented to 16 April 1998**

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EXPLANATORY NOTES

This bill modifies the rules contained in the Civil Code concerning the publication of movable rights and concerning movable hypothecs without delivery.

Thus, in addition to lifting the suspension of the publication requirement as regards reservations of ownership or rights of redemption affecting property acquired for the service or operation of an enterprise, the bill extends publication requirements to all reservations of ownership and rights of redemption in respect of road vehicles or other movable property determined by regulation. On the other hand, publication requirements are relaxed as concerns persons operating an enterprise, as it will from now on be possible, on certain conditions, to publish all such rights by means of a single registration.

The bill clarifies the rules applicable to the seller's exercise of a right of repossession or redemption, according to whether or not the reservation of ownership or right of redemption has been published. As regards repossession, the bill also revises the application of the rules relating to taking in payment contained in the Book on Prior Claims and Hypothecs, so as to accord the reposessor the benefit of the other hypothecary rights set out in that Book.

Moreover, publication will be required in the case of rights under a long-term lease pertaining to a road vehicle or other movable property determined by regulation or to any movable property required for the service or operation of an enterprise, subject in the latter case to certain regulatory exclusions. As well, an amendment will allow individuals to grant hypothecs without delivery on road vehicles or other movable property determined by regulation, whether at the time of purchase or subsequently.

The bill assigns the keeping and management of the personal and movable real rights register to an independent registrar and, for such purpose, recognizes the existence of a registry office separate from the land registry offices. A number of other adjustments are made to Civil Code rules dealing with the publication of personal and movable real rights.

Finally, the bill contains transitional provisions and consequential amendments.

LEGISLATION AMENDED BY THIS BILL :

- Civil Code of Québec ;
- Act respecting the implementation of the reform of the Civil Code (1992, chapter 57) ;
- Act respecting registry offices (R.S.Q., chapter B-9) ;
- Code of Civil Procedure (R.S.Q., chapter C-25) ;
- Consumer Protection Act (R.S.Q., chapter P-40.1).

Bill 181

AN ACT TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE PROVISIONS AS REGARDS THE PUBLICATION OF PERSONAL AND MOVABLE REAL RIGHTS AND THE CONSTITUTION OF MOVABLE HYPOTHECS WITHOUT DELIVERY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CIVIL CODE OF QUÉBEC

1. Article 1263 of the Civil Code of Québec (1991, chapter 64) is replaced by the following article :

“1263. The purpose of an onerous trust established by contract may be to secure the performance of an obligation. If that is the case, to have effect against third persons, the trust must be published in the register of personal and movable real rights or in the land register, according to the movable or immovable nature of the property transferred in trust.

In case of default by the settlor, the trustee is governed by the rules regarding the exercise of hypothecary rights set out in the Book on Prior Claims and Hypothecs.”

2. Article 1745 of the said Code is amended by replacing the second paragraph by the following paragraph :

“A reservation of ownership in respect of a road vehicle or other movable property determined by regulation, or in respect of any movable property acquired for the service or operation of an enterprise, has effect against third persons only if it has been published; effect against third persons operates from the date of the sale provided the reservation of ownership is published within fifteen days. As well, the transfer of such a reservation has effect against third persons only if it has been published.”

3. Article 1749 of the said Code is replaced by the following article :

“1749. A seller or transferee who, upon the default of the buyer, elects to take back the property sold is governed by the rules regarding the exercise of hypothecary rights set out in the Book on Prior Claims and Hypothecs; however, in the case of a consumer contract, only the rules contained in the Consumer Protection Act are applicable to the exercise by the seller or transferee of the right of repossession.

If the reservation of ownership required publication but was not published, the seller or transferee may take the property back only if it is in the hands of the original buyer; the seller or transferee takes the property back in its existing condition and subject to the rights and charges with which the buyer may have encumbered it.

If the reservation of ownership required publication but was published late, the seller or transferee may likewise take the property back only if it is in the hands of the original buyer, unless the reservation was published before the sale of the property by the original buyer, in which case the seller or transferee may also take the property back if it is in the hands of a subsequent acquirer; in all cases, the seller or transferee takes the property back in its existing condition, but subject only to such rights and charges with which the original buyer may have encumbered it at the time of the publication of the reservation of ownership and which had already been published.”

4. Article 1750 of the said Code is amended by replacing the second paragraph by the following paragraph :

“A right of redemption in respect of a road vehicle or other movable property determined by regulation, or in respect of any movable property acquired for the service or operation of an enterprise, has effect against third persons only if it has been published; effect against third persons operates from the date of the sale provided the right of redemption is published within fifteen days. As well, the transfer of such a right of redemption has effect against third persons only if it has been published.”

5. Article 1751 of the said Code is amended

(1) by replacing the words “The notice shall be published; it” at the beginning of the second sentence by the words “If the right of redemption has been published, the notice must also be published; in that case, the notice”;

(2) by adding the following sentence at the end: “In the case of a consumer contract, the twenty days’ notice is increased to thirty days.”

6. Article 1752 of the said Code is amended by replacing the words “laid upon it, provided his right was published in accordance with the rules respecting the publication of rights” at the end by the words “encumbered it with, provided the seller’s right, if it required publication, was published in due time and in accordance with the rules regarding the publication of rights.”

7. Article 1847 of the said Code is replaced by the following article:

“1847. The rights of ownership of the lessor have effect against third persons only if they have been published; effect against third persons operates from the date of the leasing contract provided the rights are published within fifteen days.

As well, the transfer of the lessor's rights of ownership has effect against third persons only if it has been published."

8. Article 1852 of the said Code is amended by adding the following paragraphs :

"Publication is required, however, in the case of rights under a lease with a term of more than one year in respect of a road vehicle or other movable property determined by regulation, or of any movable property required for the service or operation of an enterprise, subject, in the latter case, to regulatory exclusions ; effect of such rights against third persons operates from the date of the lease provided they are published within fifteen days. A lease with a term of one year or less is deemed to have a term of more than one year if, by the operation of a renewal clause or other covenant to the same effect, the term of the lease may be increased to more than one year.

The transfer of rights under a lease requires or is open to publication, according to whether the rights themselves require or are open to publication."

9. Article 2683 of the said Code is amended

(1) by replacing the words "on the conditions and in the forms authorized by law" at the end by the words "on road vehicles or other movable property determined by regulation and subject to the conditions determined by regulation";

(2) by adding the following paragraph :

"Where the act constituting the hypothec is accessory to a consumer contract, it is subject to the rules as to form and contents prescribed by this Book or by regulation."

10. Article 2700 of the said Code is amended by replacing the words "and that is registered under the name of the grantor is preserved" in the first paragraph by the words "and that is not registered in a file opened under the description of the property is preserved".

11. Article 2745 of the said Code is amended by replacing the second sentence by the following sentence : "To do so he shall notify the grantor and the debtor of the hypothecated rights that he himself will thenceforth collect the sums falling due."

12. Article 2758 of the said Code is amended by adding the following at the end of the second paragraph : " ; however, the period is of thirty days in the case of a notice relating to movable property charged with a hypothec constituted by an act accessory to a consumer contract."

13. The said Code is amended by inserting, after article 2961, the following article :

“2961.1. The registration of reservations of ownership or rights of redemption, or of any transfer thereof, in respect of a universality of movable property of the same kind that may be involved in sales or transfers in the ordinary course of business between persons operating enterprises preserves all the rights of the seller or transferee not only in that property but also in any property of the same kind involved in reservations of ownership, rights of redemption or transfers between those persons subsequent to the registration. However, such reservations, rights or transfers do not have effect against a third person who acquires any such property in the ordinary course of business of the seller’s enterprise.

Registration preserves the rights for a period of ten years; the period may be extended if the registration is renewed.

These rules also apply to the registration of rights of ownership under leasing contracts and of rights under leases with a term of more than one year, or of any transfer thereof, in respect of a universality of movable property of the same kind that may be involved in such contracts in the ordinary course of business between persons operating enterprises.”

14. Article 2969 of the said Code is amended by replacing the second paragraph by the following paragraph :

“In addition, a register of personal and movable real rights for Québec is kept in the registry office for personal and movable real rights.”

15. The said Code is amended by inserting, after article 2971, the following article :

“2971.1. No one may use the information contained in the registers and documents kept in registry offices in such a manner as to damage the reputation or invade the privacy of a person identified in such a register or document.”

16. Article 3000 of the said Code is amended by replacing the words “No copy of the act evidencing such a sale may be issued” at the beginning of the second paragraph by the words “Where an immovable is sold by way of a forced sale or a sale following the exercise of a hypothecary right, no copy of the act evidencing the sale may be issued”.

17. Article 3018 of the said Code is replaced by the following article :

“3018. The registrar may not, except for purposes prescribed by regulation, use the registers for purposes other than ensuring, in accordance with the law, the publication of the rights registered therein, particularly so as to render them effective against third persons, establish their rank and give them effect.

Nor may the registrar use the registers to furnish to any person a list of owners, hypothecary creditors or other holders of rights, a list of debtors or grantors of rights or a list of the properties owned by a person. Furthermore, no search in the land register by reference to a person's name is permitted, unless it concerns an immovable situated in a territory which has no cadastral survey, a real right of State resource development or a public service network which is not immatriculated."

18. Article 3105 of the said Code is amended by replacing the words "attached to a claim or charged on" in the third paragraph by the word "encumbering".

ACT RESPECTING THE IMPLEMENTATION OF THE REFORM OF THE CIVIL CODE

19. Sections 98, 107, 137 and 162 of the Act respecting the implementation of the reform of the Civil Code (1992, chapter 57) are repealed.

ACT RESPECTING REGISTRY OFFICES

20. Section 2 of the Act respecting registry offices (R.S.Q., chapter B-9) is amended by replacing the words "registration division" in the first paragraph by the words "registry office".

CODE OF CIVIL PROCEDURE

21. Article 592.2 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by adding the following paragraph:

"Where the property seized is not the property of an enterprise, the seizing officer must also obtain such a certified statement if the property includes a road vehicle or other movable property, or a group of such properties, which, according to the regulation under article 2683 of the Civil Code of Québec, may be hypothecated and of which the market value is estimated to be \$1,000 or more according to the valuation of the seizing officer."

CONSUMER PROTECTION ACT

22. Section 132 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by replacing the words "the transfer of ownership of the goods sold by a merchant to a consumer is deferred until" in the first and second lines by the words "a merchant selling goods to a consumer reserves ownership of the goods until".

TRANSITIONAL AND FINAL PROVISIONS

23. Unless it has already been published, a trust in respect of movable property established on or after 1 January 1994 to secure the performance of an obligation must be published within one year of (*insert here the date of*

coming into force of section 1) in order to retain its initial effect against third persons.

24. Reservations of ownership or rights of redemption in respect of movable property, as well as transfers of such reservations or rights, granted before *(insert here the date of coming into force of section 19)*, whose effect against third persons is, pursuant to the provisions enacted herein, henceforth subject to publication formalities must be published within one year of that date in order to retain their initial effect against third persons.

The same applies to a lessor's ownership rights under a leasing contract, unpublished rights under a lease of movable property with a term of more than one year or stipulations of unseizability in respect of movable property, or to any transfer thereof, granted before *(insert here the date of coming into force of section 19)*, if the effect of such rights or transfers against third persons is, pursuant to the provisions enacted herein, henceforth subject to publication formalities.

25. From *(insert here the date of coming into force of section 19)*, no entry referring to a right referred to in section 23 or 24 may be made in the register of personal and movable real rights unless the right itself is registered therein.

26. Section 10 has effect from 1 January 1994.

27. The provisions of this Act come into force on 1 July 1998, except sections 1 to 9, 12, 13, 19, 21, 23, 24 and 25 which come into force on a later date to be fixed by the Government.