

**QUEBEC CIVIL CODE — AMENDMENT AND REVISION
1954-1955**

AMENDMENTS

The most recent legislative amendments regarding the Quebec Civil Code concern the legal status of married women in the Province.

Prior to the new legislation, Article 188 of the Code provided that a wife could demand separation on the ground of her husband's adultery, only if the latter kept his concubine in the common habitation. In practice, the husband's adultery, wherever it took place, was treated by the Courts as grievous insult, which is a sufficient ground for the demand in separation by either party (Article 189).

The removal of the qualifying clause in Article 188 does away with an outdated social outlook and places the wife in the same position as the husband under Article 187.

A further amendment deals with the capacity of married women to enter into contracts. In general, the Civil Code provides that all persons have capacity to enter into contracts (Article 985). However, there was a group of persons, enumerated in Article 986, whose incapacity to enter into contracts was legally established. This enumeration included minors, interdicted persons, feeble-minded and insane persons, and married women.

The new legislation removes married women from this list. The effects of the incapacity established under Article 986 were not felt by the average housewife, who rarely enters into contracts. Further, the Courts upheld the legal fiction that wives enjoyed a tacit mandate from their husbands which enabled them to acquire household necessities. However, it did affect the married woman once she stepped out of her purely domestic role and entered into business, where the capacity to enter into contracts is of evident necessity. The new legislation removes an irksome and outmoded provision from the Code.

Having removed married women from the list of incapables contained in Article 986, the legislators added a new article, 986a, to clarify their present position. This new article provides that: "The capacity of married women to contract, like their capacity to appear in judicial proceedings, is determined by law."

Thus, although married women are no longer incapable of contracting by the mere fact of their status, their capacity to enter into contracts is still restricted. In judicial proceedings, the married woman common as to property must obtain the authorization of her husband or of a judge for all actions involving either moveable or immovable property.

The married woman separate as to property does not require such authorization in suits involving moveable property, although, as a matter of precaution, the authorization is always procured since our Courts are not imperatively bound by past decisions, and members of our Bench are not unanimously in accord in this matter.

In regard to immoveable property, the married woman separate as to property must always obtain authorization, with the exception of actions involving reserved property (Article 1425a). Here again, however, authorization is in practice always obtained, since the burden of proving that the property in question is in fact reserved property is always on the married woman, and it is a difficult burden to discharge.

These same rules apply to the capacity of married women to enter into contracts, the sole difference being that whereas in judicial proceedings, the assistance of the husband in the suit suffices, in contracts, the married woman must always secure, where required, the authorization either of her husband or of a judge.

It is to be hoped that this new legislation reflects a trend that will become more predominant with the passage of time, and that the legal capacity of married women to enter into contracts will become the rule rather than the exception. Whether such a change can be effected through judicial interpretation or whether further amendments by the Legislature will be required, is a question that remains to be answered.

REVISION

Bill 41, sanctioned in February of this year, has set in motion the machinery which will result in the revision of the Civil Code.

The Quebec Civil Code was originally promulgated and brought into force in August of 1866, almost a year before Confederation. Since that time, social and economic changes in the pattern of Quebec life have made it necessary that many alterations and additions be undertaken by the Legislature. Such changes have been of a piecemeal character, taking place under the pressure of evident necessity. No overall revision has, however, been attempted. Under these circumstances, the present revision will be a most welcome one to members of the Bench and Bar of the Province, and to students of the law.

The jurist appointed to prepare the draft of the revision has been instructed to adhere to the legislative method followed when the Code was first drawn up, "maintaining its distinctive features, making the requisite corrections of style and arrangement and advising as to such substantive changes as might advantageously be made therein." In this way, it is to be hoped that the revised Code will embody the outstanding characteristics of the old Code, while incorporating the alterations made necessary by the evolution of time.

The former Chief Justice of the Supreme Court of Canada, the Rt. Hon. Thibaudeau Rinfret, has been entrusted with the presentation of the revised draft of the Code. Other members of Quebec's legal profession will be called upon to assist him, at the discretion of the Attorney-General. It is indeed fortunate that so eminent a jurist should be available and willing to undertake such a task. The outcome is awaited with much interest.

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