

1988, chapter 17

## AN ACT TO AMEND THE CIVIL CODE AND THE CODE OF CIVIL PROCEDURE AS TO FAMILY MATTERS

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### **Bill 4**

Introduced by Mr Herbert Marx, Minister of Justice

Introduced 12 May 1988

Passage in principle 1 June 1988

Passage 16 June 1988

**Assented to 17 June 1988**

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**Coming into force: 17 June 1988**

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### **Acts amended:**

Civil Code of Québec

Code of Civil Procedure (R.S.Q., chapter C-25)





## CHAPTER 17

### An Act to amend the Civil Code and the Code of Civil Procedure as to family matters

*[Assented to 17 June 1988]*

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

C.C.Q.,  
a. 527, am.

**1.** Article 527 of the Civil Code of Québec is amended by replacing the second paragraph by the following paragraph:

“The court then grants the separation if it is satisfied that the spouses truly consent and that the agreement sufficiently preserves the interests of each of them and of the children.”

C.C.Q.,  
a. 528, am.

**2.** Article 528 of the said Code is amended by replacing the first paragraph by the following paragraph:

“**528.** At all stages of proceedings for separation as to bed and board, it comes within the role of the court to see to the interests of the children and, where appropriate, to counsel and to foster the conciliation of the spouses.”

c. C-25,  
a. 404, am.

**3.** Article 404 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended

(1) by striking out the words “before a person authorized to administer the oath” in the third line of the first paragraph;

(2) by inserting, after the first paragraph, the following paragraph:

“Depositions must in that case be made by way of affidavits sufficiently detailed to establish all the facts necessary to support the conclusions sought or be taken down by stenography or in handwriting

before a person authorized to administer oaths and be filed in the record to have the same force and effect as if they had been taken at the hearing.”

c. C-25,  
a. 553, am.

**4.** Article 553 of the said Code is amended by inserting, after paragraph 11, the following paragraph:

“(11.1) Fifty per cent of sums payable under the Family Orders and Agreements Enforcement Assistance Act (S.C. 1986, chapter 5);”.

c. C-25,  
aa. 640.1-  
640.4,  
added

**5.** The said Code is amended by inserting, after article 640, the following:

“§ 1.1—*Special Rules as to Seizure by Garnishment under the Family Orders and Agreements Enforcement Assistance Act*

“**640.1** Seizure by garnishment under the Family Orders and Agreements Enforcement Assistance Act (S.C. 1986, chapter 5) is effected by serving, by personal service or by registered or certified mail, a writ of seizure by garnishment on the garnishee and on the debtor. The writ orders the garnishee to respond in accordance with the said Act and to deposit, with the prothonotary of the judicial district where the writ was issued, the seizable part of the sums of money owed or that will become payable by it to the debtor in accordance with the said Act.

The seizure has effect for arrears as well as for payments to become due.

“**640.2** The debtor, by motion, may oppose the seizure by garnishment within ten days after the writ is served on him.

The opposition must be served on the seizing creditor and on the garnishee, by personal service or by registered or certified mail.

“**640.3** If no opposition to the seizure has been filed and no release has been given, the prothonotary pays the moneys received to the seizing creditor up to the amount due. Any remaining balance is remitted to the debtor.

“**640.4** Where a seizure is binding and a judgment is rendered which amends the writ or revises the judgment awarding support, the seizing creditor must prepare the amendments to the writ and request that the prothonotary sign and issue the amended writ and serve it upon the other parties.

The debtor may make the request, with costs against the seizing creditor, if the latter does not do so within ten days of the judgment.”

c. C-25,  
a. 822.2,  
replaced

**6.** Article 822.2 of the said Code is replaced by the following article:

**“822.2** The judge presiding at court may, before examining the final draft agreement and after ascertaining the admissibility of the application, direct that the clauses of the provisional covenant which appear to him to be contrary to the interests of the children be deleted or amended.

The judge may also, if he considers it necessary to verify that the spouses truly consent, convene and hear them, even separately, in the presence of their attorneys, if such is the case.”

Writs issued  
before  
17 June  
1988

**7.** Every writ issued before 17 June 1988 for the purpose of a seizure by garnishment under the Family Orders and Agreements Enforcement Assistance Act (S.C. 1986, chapter 5) is deemed to be a writ issued under article 640.1 of the Code of Civil Procedure and its contents are deemed to be the contents provided for in the said article.

Effect

**8.** Section 4 has effect from 2 May 1988.

Coming into  
force

**9.** This Act comes into force on 17 June 1988.