

Senator POULIOT: Concerning the solemnization of marriage.

Senator DUPUIS: Which is a provincial affair.

Senator POULIOT: Which is a provincial affair. This is a resume of what the former Chief Justice of Canada said; and if you want me to read it I will do so.

Senator ASELTINE: Put it on the record.

Senator POULIOT: Very well, I will put it on the record. It was in Senate *Hansard* of November 8, 1962.

Hon. Maurice L. Duplessis,
Q.C., M.L.A.,
Premier and Attorney General,
Parliament Building,
Quebec City.

My dear Premier,

This morning, at a conference with the special revision officers, Mr. Jean François Pouliot and Mr. Emile Delâge, N.P., strong doubts were raised concerning the legality of the amendments passed by the legislature as regards marriage, separation from bed and board and marriage covenants.

It was represented that, with the exception of the 1903 amendment to article 130 C.C. for the publication of banns in the case of persons belonging to the Jewish faith which forms part of chapter entitled "Of the Formalities relating to the Solemnization of Marriage", the sixteen other amendments respecting marriage and separation from bed and board might be illegal and ultra vires.

Apparently, articles 145, 146 and 147 C.C., as well as articles 121, 125, 138, 170, 176, 177 and 180 C.C., which are part of the Title of Marriage, would come exclusively under federal jurisdiction, and not provincial jurisdiction, in all matters concerning amendments to the original version of the 1866 civil code.

The same thing could be said of the amendments to articles 188, 192, 193, 194, 210 and 217 C.C., which are part of the Title of Separation from Bed and Board.

Sub-section 26 of section 91 of the British North America Act, 1867, gives the federal parliament an exclusive legislative authority on marriage and divorce; on the other hand, all that the same act entrusted to provincial legislatures concerning marriage, under sub-section 12 of the following section 92, is the exclusive power to legislate in relation to the "solemnization of marriage in the province".

It was also represented, for the same reasons, that the legislature has gone beyond its powers in amending several articles of the title "Of marriage covenants and of the effect of marriage upon the property of the consorts."

If there were a basis for the serious doubts thus raised, it would be the original version of 1866 of those articles amended by the legislature which would remain in force, notwithstanding the subsequent amendments which would be ultra vires, illegal and void.

The articles concerning marriage, separation from bed and board and marriage covenants are of such importance, from the standpoint of the family, and are such a delicate matter, that I consider it my duty to inform you of the objections of a strictly legal nature which were raised against the amendments passed by the legislature in these matters.