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The Family under the Quebec Succession Duties Act

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Introduction

Inheritance taxation, by no means a recent phenomenon, (1) has from the earliest times been distinguished by a special deference shown to the family. (2) Aware that the effectiveness of the family as a social unit is at least influenced by its economic viability, most legislators attempt to assuage the financial hardship ensuing from death and at the same time encourage "family" transmissions (3) by perforating the tax net to various extents in favour of this basic institution. (4) The Quebec legislator is no exception. Nonetheless, the modalities chosen by it for the application of the above principles have recently been

(1) Gleason, Lafayette, and Otis, Alexander, *A Treatise on the Law of Inheritance Taxation*, 2nd ed., 1919, p. 3; Rivard, Eugène, *Les Droits sur les Successions dans la Province de Québec*, 1956, p. 1.

(2) Gleason, Lafayette, and Otis, Alexander, *op. cit.*, at p. 44; Rivard, *op. cit.*, at pp. 1, 2.

(3) Which can be avoided by the technique of the will (cc. 831 & ff.) despite the family's plausible moral claim to co-ownership of its members' property.

(4) However, this objective must, of course, be viewed in the light of the state's obligations towards society as a whole, which compel the very *imposition* of the tax. Whether or not one agrees that all property is a social product, with the result that he who has been enabled through social organization to amass wealth during his lifetime may justly be required to make some repayment to society on his death, it would be difficult to refute Professor Frank Scott's observation that "... to all intents and purposes a new heir (the state) is created by this method (succession duties) with a priority over other classes of heirs." The upshot is that the state today has an even more absolute right than the family to a share in the patrimony of a deceased person — see Scott, F. R., *"The Law of Successions in the Quebec and French Civil Codes"*, Le Droit civil français, 1936 (Barreau de Montréal) at pp. 177 & ff.

called into question by the Bélanger report, and it would therefore seem timely to evaluate the law of Quebec on the subject.

Under the *Quebec Succession Duties Act*, (5) the "direct line", which englobes, but is not limited to, the immediate family, benefits from the lowest of three combined rates (6) and is especially favoured with respect to exemptions. (7) However, neither the composition of the family (which for the requirements of this paper will be restricted to the parents, children, and "first-degree" in-laws) or the definition of the patrimony transmitted to it is free from ambiguity under the act. It is therefore proposed to analyze the family's position with particular reference to the persons included and the property taxable for succession duty purposes. Before this is undertaken, though, it would be useful to comment briefly upon a concept which pervades both these considerations, domicile.

Besides the evident constitutional implications of domicile, (8) it has an important bearing on the status and capacity of persons, (9) the place where the succession devolves, (10) the matrimonial régime of the consorts (11) the devolution of moveables, (12) and the property taxable. (13) It is thought of as the place of principal establishment, the

(5) 1964, R.S.Q., c. 70.

(6) *ibid.*, s. 9.

(7) *ibid.*, ss. 10, 11.

(8) The province, being limited to direct taxation within the province under s. 92-2 of the *B.N.A. Act*, can only impose tax on property situate within the province (*Rex v. Lovitt* 1912 A.C. 212; *Toronto General Trusts Corporation v. The King* 1919 A.C. 679) or on moveable property situate outside the province, provided that the tax is imposed on the transmission of the property and not on the property itself (*Provincial Treasurer of Alberta v. Kerr* 1933 A.C. 710), that the transmission is within the province, i.e. the person to whom the property is transmitted is either domiciled or ordinarily resident within the province, and, finally, that the transmission is due to the death of a person domiciled within the province (*Alleyn v. Barthe* 1922 1 A.C. 215 at p. 228) — see also *Lambe v. Manuel* 1903 A.C. 68; *Cotton v. The King* 1914 A.C. 176; *Royal Trust Co. v. Minister of Finance* 1922 1 A.C. 87; *Rec. Gen. of N.B. v. Rosborough* 24 D.L.R. 354; *Boyd v. A. G. for B. C.* 54 S.C.R. 532; Anderson, J. R., *Succession Duties — Double Taxation* 1937 15 Can. Bar Review 620. It is to be noted that double taxation of moveables is thus possible, but this is mitigated considerably by s. 59 of the Quebec Succession Duties Act and orders-in-council thereunder — see also Lavallée, Armand, *Le Règlement des Successions* 1925-26 28 R. du N. 302 at pp. 353 & ff.

(9) C.C. 6 par. 4.

(10) C.C. 600.

(11) See *Pouliot v. Cloutier* 1944 S.C.R. 284; *Wadsworth v. McCord* 1886 12 S.C.R. 466.

(12) C.C. 6 par. 2.

(13) 1964 R.S.Q. c. 70 (*Quebec Succession Duties Act*) ss. 4, 6; Rivard, *op. cit.*, p. 25, No. 55.

permanent home (14) or focal point of a person (15) and it cannot be changed until a new domicile has been acquired. (16) It is to be determined by the lex fori (17) and thus serves as an indispensable anchor when it is necessary to apply conflict rules to either persons in the family or their property in order to ascertain liability for death duties.

I. The Persons

A – The matrimonial status

Under ss. 9, 10, and 11 of the *Succession Duties Act*, (18) consorts are included in the privileged "direct line". (19) Since it is undisputed

(14) C.C. 79-85; Castel, J. G., *Domicile* 5 M. L. J. 1; *Trahan v. Vezina* 1947 8 D. L. R. 769; *Bonilla v. Lefebvre* 1964 Q. B. 102.

(15) Johnson, Walter S., *Conflict of Laws*, 2nd ed., 1962 at p. 62; see generally the same author's *Du domicile en France et dans la province de Québec* 1934 13 R. du D. 71 and *Domicile in its legal aspects* 1929 7 Can. Bar Rev. 356, as well as his book above at pp. 59 & ff.; Gérin-Lajoie, *Du domicile et de la juridiction des tribunaux*, 1922; Jetté, *Du domicile* 2 R. du D. 210; Lafontaine, *Le Domicile* 1891 La Thémis 289; Lilkoff, L. *Le Domicile* 1954 14 R. du B. 361; Mackay, H., *Domicile matrimonial* 1941 1 R. du B. 83; Castel, *op. cit.*, *Power on Divorce*, 1964, and the following cases in particular : *Wadsworth v. McCord*, *op. cit.*, *O'Meara v. O'Meara* 1916 49 S.C. 334; *Taylor v. Taylor* 45 K.B. 184; 1930 S.C.R. 26; *Trottier v. Rajotte* 1940 S.C.R. 203; *Trahan v. Vézina* 1946 K.B. 14; 1947 3 D.L.R. 769. For the rules relating to married women, minors, adopted and natural children, see Turgeon, H., *Le domicile et la compétence judiciaire en matière non contentieuse* 55 R. du N. 385 and *Power on Divorce*, op. cit.

(16) The acquisition of a new domicile, according to the Supreme Court of Canada "involves two factors — the acquisition of residence in fact in a new place and the intention of permanently settling there : of remaining there, that is to say, as Lord Cairns says 'for the rest of his natural life' in the sense of making that place his principal residence indefinitely" — *Trottier v. Rajotte*, *op. cit.*, at p. 207. See also *Delhalle v. Matthes* 1963 S.C. 261; *Wanless v. Bain* 1964 P.R. 312.

(17) Johnson, W. S., *Conflict of Laws*, 2nd ed., 1962, at p. 398.

(18) 1964 R.S.Q. c. 70.

(19) It should be remarked that the term "direct line" used in this sense is not the direct line of the Civil Code (CC. 616, 617 & ff.), repeated in the first two lines of s. 9 (1) of the *Succession Duties Act*, but is the term used to denote the class of persons mentioned in ss. 9 (1) and 10 of the latter act. Moreover, the exemptions contemplated in s. 11 of the act are not personal : provided the other conditions pertaining to eligibility and taxable value are met, the exemption is granted as soon as any one of the persons mentioned in s. 9 (1) inherits and does not vary (save for the number of surviving children envisaged in s. 11 (b)) according to the number of such persons who succeed. Thus the exemption inures to the *class*.

that the qualification of "consort" must be determined by the civil law, (20) a summary consideration of the latter is in order.

1. *The validity of the marriage*

The internal rules of the Civil Code on this matter are set forth in arts. 115-164 and art. 185; the conflict rules are found in arts. 6, 7 and 135. In general terms, valid marriages are those celebrated between persons who, having the requisite civil capacity and being free to marry, fulfill the substantive and formal conditions imposed by the competent legal system. (21)

More specifically, marriage, although considered as a status, also pertains to the nature of a contract, due to the consensual aspect of the transaction. (22) Consequently, the capacity of the parties to marry will be determined by the law of the domicile, (23) but it is the settled Quebec conflict rule that as regards the formalities of celebration, i.e. the formal validity of the marriage, the law which governs is the lex loci celebrationis. (24) However, difficulties sometime arise in deciding if a question

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(20) Rivard, *op. cit.*, p. 27 No. 58; p. 37 No. 78.

(21) See Baudouin, Louis, *Le Droit civil de la Province de Québec*, 1953 at pp. 146 & ff.; Trudel, Gérard, *Traité de Droit civil du Québec* t. 1, 1942, at pp. 355 & ff.; Langelier, F., *Cours de Droit civil de la Province de Québec*, t. 1, 1905, at pp. 234 & ff.; Mignault, P. B., *op. cit.*, at pp. 331 & ff.; Johnson, W. S. Conflict of Laws, 2nd ed., 1962, at pp. 185 & ff. And see, among others, *Dussault v. Enloe* 1965 S.C. 448; *Weinstock v. Blasenstein* 1965 S.C. 505; *Hivon v. Gagnon*, 1962 S.C. 399; *Lanzetta v. Falco* 1962 S.C. 593; *C. v. J.* 1961 S.C. 672; *Ovadia v. Basette* 1954 S.C. 337; *S. v. M.* 1954 R.L. 346; *K. v. R.* 1949 K.B. 452; *Yorksie v. Chalpin* 1946 K.B. 51; *Betnitzky v. Betnitzky* 1947 R.L. 278; *Maguire v. Mooney* 1941 79 S.C. 172; *Page v. Knott* 1939 77 S.C. 354; *Neilsen v. Beaudin* 1920 57 S.C. 37. The following jurisprudence is especially relevant to arts. 127-129 C.C.; *Dubé v. Ouellet* 1966 S.C. 16; *Burelle v. Grandmont* 1964 S.C. 314; *Jodoin v. Mower* 1953 S.C. 253; *Yorksie v. Chalpin, op. cit.; Howard v. Bergeron* 1941 71 K.B. 154; *Despatie v. Tremblay* 1921 A.C. 702; *Durocher v. Degré* 1901 20 S.C. 456; *Delpit v. Côté* 1901 20 S.C. 338; *Laramée v. Evans* 1880 24 L.C.J. 235.

(22) Castel, J. G., *Canadian private international law rules relating to domestic relations* 1958 5 M.L.J. 1 at p. 1.

(23) C.C. 6 par. 4.

(24) The Privy Council in the leading case of *Berthiaume v. Dastous* 1930 A.C. 79 at p. 83 stated as follows: "If there is one question better settled than any other in international law, it is that as regards marriage — putting aside the question of capacity — locus regit actum. If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicil of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated,

of "capacity" or of "solemnization" is involved,(25) and then the characterization chosen by the lex fori becomes of singular importance.(26)

The valid marriage engenders the status of consort with its appurtenant succession duty incidents. These latter privileges are not lost by a judgment of separation from bed and board,(27) for the marriage tie subsists.(28) Conversely, the absolute nullity of a marriage, once declared by the courts, carries with it the eradication of all the rights to which the marriage would otherwise have given rise(29) and it would follow that the pseudo-consort would be excluded from the direct line.

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there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicil would be considered a good marriage". See also *Varju v. Juhasz* 1964 S.C. 636; *Wilson v. Partridge* 1959 S.C. 17; *F. v. G.* 1951 S.C. 458; *Pearson v. Barrett* 1948 S.C. 65; *N. v. T.* 1949 S.C. 327; *Cholette v. Jones* 1938 45 R.L. n.s. 111; *Stephens v. Falchi* 1938 S.C.R. 354. The foregoing rule is nonetheless subject to local public policy. As to conflicts of jurisdiction, see *Thibault v. Zannetin et Charlebois* 1956 S.C. 263; *Kon v. Woodward* 1956 S.C. 202; *L. v. M.* 1951 S.C. 275; *Somberg v. Zaracoff and Rothblatt* 1949 S.C. 301; *Main v. Wright* 1945 K.B. 105; *Berthiaume v. Dastous, op. cit.; Cohen v. Kautner* 1929 67 S.C. 94.

(25) For example, the necessity of parental consent to a minor child's marriage has been characterized as a question of capacity (*Agnew v. Gober* 1910 38 S.C. 313; *McLure v. Holford* 1946 R.L. 126) and a question of form, regulated by the law of the place of celebration (*Redshaw v. Redshaw* 1942 S.C. 109). See also *F. v. G., op. cit.*

(26) *Batiffol* states that this characterization is necessarily asked of the lex fori — *Traité élémentaire de droit international privé* 3rd ed., 1959, at pp. 338 & ff.

(27) Demers, Donat, *Chronique de Droit fiscal*, 55 R. du N. 411 at p. 418.

(28) C.C. 206.

(29) See *Baudouin*, L., *op. cit.*, at p. 192 and Loffmark, Ralph R., & McKay, Gordon D., *Tax and Estate Planning*, 1965, at p. 561. Note that *Johnson, op. cit.*, basing himself on the jurisprudence, is of the opinion that the Quebec courts have not jurisdiction to touch the status and capacity of spouses of foreign domicile, though their marriage be void of an absolute nullity, ab initio. However, it seems to the writers that a more exact view would be to hold that in some cases a Quebec court might nevertheless be competent to entertain the action according to its own conflict rules of *jurisdiction* (see in particular C.P. 210-212; 94 & ff.). Which *substantive conflict rules* would be applied is a different question, and it is admitted that if the juridical situation is characterized as a matter of status and capacity, a Quebec court would be obliged to give effect to the law of the domicile (CC. 6); furthermore, it is conceivable that the nullity of the marriage would be characterized as a question of solemnization, and then the law of the place of celebration would be applicable according to Quebec conflict rules. In either eventuality, the end result might well be to affect the status and capacity of the parties. Nevertheless, the position espoused by Johnson above was recently adopted in a case dealing with separation from bed and board (*Morrier v. Ronalds* 1965 S.C. 481), where the substantive conflict rule based on domicile was in effect used to determine a question of jurisdiction. The same arguments above set forth by the writers are equally valid here. See also *Ryan v. Pardo*, 1957 R.L. 321.

However, the Civil Code considerably mitigates the harshness of the retroactivity of nullity judgments by attributing putative effects to the annulled marriage if the element of good faith was present. This variation of the marital status thus merits an individual scrutiny.

2. *The putative marriage*

It is good faith (30) which is decisive of the civil effects to be attributed to an annulled marriage. The Civil Code has expressly sanctioned this principle of equity (31) in arts. 163 and 164. (32) The quality of "consort" for succession duty purposes will therefore depend on both the good faith of the surviving pseudo-consort and the scope of the civil effects to be imputed to the putative marriage.

When a spouse is in bad faith, he can under no circumstances be deemed a consort either under the *Civil Code* or the *Succession Duties Act*, since the marriage is considered as never having occurred, and this regardless of the date of the judgment decreeing the nullity of the marriage. (33) On the other hand, this latter date is of primary importance in the controversy which has arisen as to the extent of the succession rights of the intended consort in good faith, it being generally conceded that his succession duty rights stand or fall with his ab intestate succession rights under the Civil Code. (34)

Mignault, (35) *Trudel*, (36) *Baudouin*, (37) and *Brière* (38) agree that the right to succeed is one of the civil effects a putative marriage produces.

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(30) Which consists of ignorance of the cause of nullity on the part of the consorts. This can be an error of fact or law — *Baudouin*, L., *op. cit.*, at p. 193; *Langelier*, op. cit., t. 1, p. 298.

(31) *Baudouin*, L., *op. cit.*, at p. 193.

(32) C.C. 163 : A marriage although declared null, produces civil effects, as well with regard to the husband and wife as with regard to the children if contracted in good faith. C.C. 164 : If good faith exists on the part of one of the parties only, the marriage produces civil effects in favor of such party alone and in favor of the children issue of the marriage.

(33) *Baudouin, L., op. cit.*, at p. 193; *Loffmark, R. & McKay, G., op. cit.*, at p. 562; *Mignault, op. cit.*, at p. 460; *Rivard, op. cit.*, at p. 28 No. 61. And see the jurisprudence mentioned in foot-notes 21 and 24.

(34) Loffmark, R. & McKay, G., *op. cit.*, at p. 562; *Rivard, op. cit.*, p. 27 No. 60.

(35) *op. cit.*, at p. 458.

(36) *op. cit.*, at p. 465.

(37) *op. cit.*, at p. 196.

(38) Brière, Germain, *Le mariage putatif* 6 M. L. J. 217. This view is explicitly confirmed by *Stephens v. Falchi* 1938 S.C.R. 354 at p. 365.

Furthermore, they do not diverge on the point that if the succession opens before the judgment of nullity is pronounced, the consort in good faith is entitled to succeed. (39) However, *Mignault* and *Brière*, invoking the premise that the annulment of the marriage removes from the consorts their conjugal status for the future, (40) argue that the logical consequence is that even the consort in good faith cannot succeed to the other if the nullity of the marriage is decreed while both consorts are *living* (41). *Rivard* (42) adopts this line of reasoning, and concludes that the ex-consort in this case would be considered a "stranger" under the *Succession Duties Act*.

Trudel, (43) *Baudouin*, (44) and *Loffmark* (45), on the other hand, do not take into account the time factor of the nullity judgment and thereby support the view that the putative consort is always entitled to succeed.

It would seem to the writers that the latter is probably the correct appreciation of the law on this point. The case of *Stephens v. Falchi* (46) confirmed that one of the "civil rights appendant to real marriage" (47) which *subsists* is "any share of the husband or wife in good faith, as the case might be, in the succession of his or her con-

(39) *ibid.*, at p. 225; see *Hickman v. Legault* 1961 S.C. 192.

(40) *Mignault*, P. B., *op. cit.*, at p. 458; *Brière, G., op. cit.*, at p. 223 : "Selon la doctrine la plus sûre, les effets produits avant l'annulation ou la déclaration de nullité sont maintenus, alors que le mariage cesse de produire des effets pour l'avenir." — see also *Montmigny v. Lelièvre* 1939 67 K.B. 197.

(41) *Mignault, P.B., op. cit.* at p. 458; *Brière, G., op. cit.*, at p. 226. Nonetheless, the latter recongnizes that the Privy Council strayed from this interpretation of the law, which he believes the proper one, in *Berthiaume v. Dastous* 1930 47 K.B. 533 at pp. 540 & 551 : "...First, he (counsel) said that the civil rights referred to were only those which existed up to the date when the marriage was declared null. The simple answer is that the word is *produces* not *has produced* and the absurdity of such a doctrine when applied to the legitimacy of children who in the article are linked with the wife, is manifest... It is quite true, as said, that all civil rights appendant to real marriage are not produced by a putative marriage. But the criterion is obvious : those only subsist which are consistent with a real marriage not existing." *Brière* thus feels that the case of *Morin v. La Corporation des Pilotes* (1882 8 Q.L.R. 222), which refused to follow *Laurent* (see *Stephens v. Falchi*, infra) and held that if the marriage has been declared null before the death of the consorts, 'le titre même de la vocation successorale manque quand la succession vient à s'ouvrir' is more consistent with the Civil Code.

(42) *op. cit.*, at p. 30 No. 64.

(43) *op. cit.*, at p. 466.

(44) *op. cit.*, at p. 196.

(45) *Loffmark, R. & McKay, G.*, op. cit., at p. 561.

(46) 1938 S.C.R. 354.

(47) the phrase used in *Berthiaume v. Dastous*, op. cit.; see foot-note 41.

sort". (48) Accordingly, if this civil effect is an automatic consequence of the judgment of nullity itself, provided good faith is present, the timing of this judgment should not be able to affect one of the substantial incidents adhering thereto. Moreover, the Supreme Court adopted Laurent's comments to this effect :

> "La seule objection sérieuse que l'on puisse faire au conjoint, c'est que le mariage annulé ne peut plus produire de nouveaux effets à partir du jugement qui a prononcé la nullité; or, le droit de succession est un nouvel effet. Mais cet argument ne peut pas être opposé aux enfants; pourquoi donc l'opposerait-on à l'époux ?" (49)

While it is recognized that because of the facts in this case, the above might be considered obiter dictum, the reasoning, it is submitted, still holds true. Moreover, *Wilson v. Partridge* (50) quoted *Stephens v. Falchi* (51) as authority for the proposition that rights of inheritance are among the civil effects of a putative marriage, (52) and it would thus appear that the trend of the jurisprudence would favour the writers' interpretation. It is therefore contended that the putative consort should be classified in the direct line for succession duty purposes under the law of Quebec.

As for private international law aspects, the Quebec law will be applied if the parties were domiciled in Quebec at the time of their marriage (53), and also if immoveables are involved (54). Putative effects are generally considered as incidents of status, and should be determined by the law of the domicile. (55)

3. *Divorce*

Divorce, so far as the matrimonial rights of the consorts inter se are concerned, (56) dissolves the marriage as effectively as the natural

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(48) *op. cit.*, at p. 365.

(49) *Laurent* 2 Br. Civ. No. 511; quoted at p. 366.

(50) 1959 S.C. 17 at p. 21.

(51) *op. cit.*

(52) and concluded that community rights must therefore be also.

(53) *Wilson v. Partridge* 1959 S.C. 17; *Flam v. Flitman* 1958 14 D.L.R. (2d) 174; *Stephens v. Falchi, op. cit.; Baraket v. Eddy* 1932 70 S. C. 125; *Berthiaume v. Dastous, op. cit.;* and see *Castel*, J. G., *op. cit.*, 5 M.L.J. 1 at p. 12.

(54) CC. 6 par. 1.

(55) CC. 6 par. 4 and see *Stephens v. Falchi*, op. cit.

(56) *Desnoyers v. David* 1923 61 S.C. 206; *Corber v. Margolick* 1950 S.C. 369; see also *Maloney v. Rassie* 1961 R.L. 169.

death of one of the parties. The divorcees are thus considered as "strangers" under the *Succession Duties Act*. (57) However, to be fiscally effective, the divorce must have been granted in conformity with both jurisdictional and legislative rules of competency.

If the consorts were domiciled in Quebec, Parliament has sole jurisdiction to dissolve the marriage. (58) Moreover, once pronounced, (59) the divorce will be recognized by the courts of Quebec. (60) However, when the effects of a foreign divorce judgment are submitted to judicial scrutiny, the courts of Quebec not only decide on the basis of the foreign court's jurisdiction and its application of the proper substantive conflict rule, they also take into account Quebec public policy and the possibility of fraud. (61)

Although divorce is a question of status, (62) the recognition of a foreign divorce does not principally depend upon the choice of the proper law governing the merits of the action. It hinges instead upon the question of jurisdiction. (63) And it is now well-settled that the court of the domicile of the husband for the time being alone has jurisdiction to decree a divorce. (64) A problem, however, arises if there is no single

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(57) *Rivard, op. cit.*, at pp. 270, 271; *Demers, Donat, op. cit.*, at p. 418 .

(58) *Power on Divorce*, 1964, at p. 23; *G. B. Holding Co. Ltd. v. Hummel & Riecker* 1963 R. L. 61; *Beigue v. Moquin* 1960 S. C. 267; *Binns v. Jekill* 1957 S. C. 49; *Cox v. Jones* 1951 S. C. 32; *Trahan v. Vézina* 1947 3 D.L.R. 769; *Stephens v. Falchi, op. cit.*; *Rivard, op. cit.*, at p. 270. And see the *B.N.A. Act* s. 91-26, C.C. 185 and the statutes in foot-note 59.

(59) In accordance with the following statutes : *Marriage and Divorce Act* 1952 R. S. C. c. 176; *Dissolution and Annulment of Marriages Act* 1963 S. C. c. 10; see also, for jurisdiction in the other provinces, the *Divorce Jurisdiction Act* 1952 R. S. C. c. 84.

(60) *Winer v. Great Life Ass. Co.*, 1941 79 S. C. 262; *Paradis v. Lemieux* 1955 S. C. R. 282; *Mertens v. Herscovitch* 1959 K. B. 263; *Bilodeau v. Tremblay* 1962 S. C. 354; *G. B. Holding Co. Ltd. v. Hummel & Riecker, op. cit.*

(61) See *Monette v. Larivière* 1926 40 K. B. 350; Johnson, *op. cit.*, at p. 368.

(62) *Trahan v. Vézina* 1946 K. B. 14 at p. 27 (confirmed 1947 3 D. L. R. 769).

(63) See *Castel, J. G.*, 5 M. L. J. 1 at p. 15.

(64) See the leading case of *Le Mesurier v. Le Mesurier* 1895 A. C. 517 and the following : *Gregory v. O'Dell* 1911 39 S. C. 291; *Carter v. Lemoine* 1923 26 P. R. 56; *Monette v. Larivière, op. cit.*; *McNutt v. Cree & Ledain* 1928 66 S. C. 332; *Stern v. Stern* 1935 58 K. B. 391; *Stephens v. Falchi, op. cit.*; *Tétrault v. Baby* 1940 78 S. C. 280; *Drummond v. Higgins* 1944 K. B. 413; *Trahan v. Vézina, op. cit.*; *Nusselman v. Novik* 1949 S. C. 431; *Cox v. Jones* 1951 S. C. 32; *L. v. M.* 1951 S. C. 275; *Gauvin v. Rancourt* 1953 R. L. 517; *Goldenberg v. Triffon* 1955 S. C. 341; *Thibault v. Zannetin & Charlebois* 1956 S. C. 263; *Ken v. Woodward* 1956 S. C. 202; *Binns v. Jekill* 1957 S. C. 49; *Wilson v. Partridge* 1959 S. C. 17; *Lillie v. Hendershott* 1962 Q. B. 148. *G. B. Holding Co. Ltd. v. Hummel & Riecker* 1963 R. L. 61; Lafleur, E., *The Conflict of Laws in the Province of Quebec* 1898, at p. 82; *Johnson, op. cit.*,

conjugal domicile, as when a separation from bed and board has been pronounced and one of the parties has established a new domicile (C.C. 207). It would appear that in these circumstances a foreign judgment of divorce would have no effect against a Quebec domiciliary. (65)

Finally, it would seem that the above principles would be resorted to by analogy in the case of a divorce decreed by a legislative or quasi-legislative body of a foreign state. Such a divorce would be recognized by Quebec courts if the conjugal domicile was situated in that state and if its decree, when judged on the merits, would not transgress the public policy of Quebec.

B – Children and the vertical relationship

That the "direct line" mentioned in the *Succession Duties Act* embraces legitimate children (66) is uncontestable. Legitimacy is characterized as a question of status and thus a child born in lawful wedlock according to the law of the father's foreign domicile would be deemed

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at p. 399; Crépeau, P. A., *La reconnaissance judiciaire des jugements de divorce étrangers dans le droit international privé de la province de Québec* 1959 19 R. du B. 310 at p. 318. This last writer affirms that 'la compétence du tribunal étranger devrait être appréciée à la lumière des règles de compétence juridictionnelle du tribunal saisi' op. cit., at p. 317, which would mean that recourse is had to the *Quebec* notion of domicile to determine the domicile of the husband for the time being. Although the jurisprudential solution is a practical one, its juridical foundation is open to question, since domicile is mentioned in C.C. 6 only in connection with the substantive or legislative conflict rule. Nonetheless, the dilemma is not satisfactorily resolved by following the Quebec *Code of Procedure's* rules as to jurisdiction (these originally being intended as internal rules only — also, is divorce "a purely personal matter" ?), although the combination of C.P. 210 and Quebec public policy re the substantive law applied would in most cases afford a sound protection against the abuses of courts of foreign countries. Note that the substantive law to be applied to divorce is also the law of the conjugal domicile C.C. 6 par. 4; *Crépeau, op. cit.*, at p. 323; *Goldenberg v. Triffon, op. cit.*

(65) See *Monette v. Larivière, op. cit.; Crépeau, op. cit.*, at p. 323. But see *Stevens v. Fisk* 8 L.N. 42.

(66) C.C. 218-239. There can, of course, be legitimation by subsequent marriage (C.C. 237-239), which depends upon the law of the domicile of the father at the time of his marriage without regard to the law of his domicile at the time of the child's birth — *Jack v. Jack* 1927 65 S.C. 10; *Castel, J. G.*, 5 M.L.J. 1 at p. 30. In Quebec, the child once legitimated has the same rights as if he were born of such marriage (C.C. 239), but from the date of the marriage only — see also *Rivard, op. cit.*, at p. 27 No. 58. Apparently a child cannot be post-humously legitimated if he leaves no children — *Tkachena v. Orrell* 1940 S.C. 340; 1942 K.B. 621.

legitimate by Quebec law. (67) Nor is this status lost by the subsequent divorce of the parents; the children and parents remain reciprocally in the "direct line" vis-à-vis one another. (68) On the other hand, if the marriage was annulled, the children and parents are reciprocally categorized as "strangers", (69) unless the marriage is putative. Besides putative marriage, though, natural children and adopted children also present particular problems which must be touched upon.

1. *"Putative" children*

Once more, the Civil Code's influence is prevalent. Since the children always succeed ab intestate to their parents if at least one consort was in good faith when the annulled marriage was solemnized, (70) they are entitled to the lowest rates and/or exemption proffered by the *Succession Duties Act*. However, although the children succeed to even the parent in bad faith, it is only the parent in good faith who may succeed to his "putative" children, (71) and thus he is privileged for tax purposes. (72) This privileged or unprivileged fiscal position is applicable mutatis mutandis to testamentary successions.

A more subtle point arises in connection with the possibility of legitimating a natural child (exclusive of incestuous or adulterous children) (73) by a putative marriage. In this matter, the doctrine accepts

(67) See *Lefebvre v. Digman* 1897 3 R. de J. 194 where it was held that the quality of father and legitimate child is irrevocably governed by the law of the father's domicile at the time of birth; see also *Lapotterie v. C.P.R.* 1906 12 R. de J. 159; *Johnson, op. cit.*, at p. 220; *Castel, J. G.* 5 M. L. J. 1 at p. 29. The latter points out that the status is determined by the law of the domicile of the parent whose relationship to the child is in question.

(68) *Rishikoff v. Neidik* 1959 R. L. 321; *M. v. S. & G. H. Wood & Co. Ltd.* 1951 S. C. 386; *Rivard, op. cit.*, at p. 272 No. 755; *Johnson, op. cit.*, at p. 318.

(69) But see *Cox v. Jones* 1951 S. C. 32 where the court refused to grant civil effects to a marriage in the absence of good faith of the consorts, but reserved to the child born of the said marriage "all rights that such child may have of any kind or description from the said marriage", which could be interpreted as meaning civil effects accrue to the children, and the *case and comments* thereon by *S. W. Weber*, at 1960 R. du B. 263.

(70) C. C. 163, 164; Trudel, *op. cit.*, at p. 458; *Mignault, op. cit.*, at p. 458; *Brière, op. cit.*, at p. 227; *Baudouin, L., op. cit.*, at p. 195.

(71) *Mignault, op. cit.*, at p. 460; *Brière, op. cit.*, at p. 227; *Loffmark & McKay, op. cit.*, at p. 562.

(72) *Loffmark & McKay, op. cit.*, at p. 562.

(73) See C. C. 237.

the theory that a putative marriage carries with it the effect of legitimation. (74)

Finally, children of foreign putative marriages are recognized as legitimate if such status is given to them by the lex domicilii at the time of their birth. (75) The incidents of this status, (76) then, will be respected by Quebec courts for succession duty purposes when moveable property is involved.

2. *Unlegitimated natural children*

This topic brings directly into focus the twilight zone separating the civil and fiscal spheres of influence, especially with respect to statutory interpretation. Some jurists argue that in this matter the words of the *Succession Duties Act* have an independent meaning and therefore should be interpreted according to their plain import. (77) For them, a natural child, although illegitimate, is still a descendant, and that suffices to fall into the "direct line". (78) Moreover, they contend that this classification is particular to the *Succession Duties Act*, (79) the purpose of which is not to determine the *order* of successions, but to fix the rate of duties at which the successions are to be *assessed*. (80) Accordingly, the "direct line" of the act cannot be assimilated to the "direct line" of the Civil Code. (81) Nonetheless, their strongest argument stems from the wording used to describe the class of "strangers", the only other class in which the natural child could conceivably be placed under the act :

> "On property transmitted, owing to death, to any person in any degree of collateral consanguinity with the deceased other than those mentioned in the last preceding subsection, or to any stranger in blood (ou à toute personne étrangère, par le sang, à la personne décédée) to the deceased, and on transmissions to the same persons, the rates of duty shall be as follows:" (82)

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(74) *Baudouin, op. cit.*, at p. 195; *Mignault, op. cit.*, at pp. 458-459; *Loffmark & McKay, op. cit.*, at p. 562.

(75) See *Castel, J. G.*, 5 M. L. J. 1 at p. 29.

(76) Which status is not affected by a subsequent change of domicile — *ibid.*

(77) See *Tellier, J.* (Court of Revision) in *McLaren v. Fortier* 1912 S.C. 315; *Demers, Donat, Chronique de Droit Fiscal* 55 R. du N. 411 at p. 414. The act reads as follows in S. 9 (1): "On property transmitted in the direct line, ascending or descending . . .".

(78) *Demers, Donat*, op. cit., at p. 415.

(79) *ibid.*, at p. 414.

(80) *McLaren v. Fortier* (*Tellier, J.*, in Court of Revision) *op. cit.*

(81) *Demers, Donat, op. cit.*, at p. 414.

(82) S. 9 (3) of the *Succession Duties Act*.

Because the natural child is certainly not a stranger in blood to the deceased, he cannot be otherwise than in the direct line. (83)

Another school of thought, however, insists that the natural child ought to be excluded from the act's privileged class. In their opinion, there can be no derogation from the juridical significance ascribed to the words "direct line" by the common law of persons and property without the legislator's express direction : (84)

> "...ni le texte ni l'objet de la loi ne permettent de conclure que les mots succession, ligne directe, ligne collatérale, parents, ont dans cette loi relative à l'impôt successoral un sens différent de celui qui leur est attribué dans la loi générale des successions et dans tout le droit civil. On doit donc les prendre ici dans leur acception légale ordinaire." (85)

And so, because under the Civil Code the natural child cannot inherit ab intestate from his natural parents, he is to be deemed a stranger under the act. (86)

The writers would first endorse the principle that under the civil law, the natural child does not inherit ab intestate from his natural parents and vice-versa. (87) The issue, then, is clearly whether the fiscal act has grafted the Civil Code's definition upon its exemption section. While the writers lean towards the second school which answers the preceding question in the affirmative, especially when it is considered that where doubt arises as to the provision enacting an exemption, the doubt is to be resolved in favour of the Crown, (88) it is recognized that

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(83) *Demers, Donat, op. cit.*, at p. 415.

(84) See *Rivard, op. cit.*, at p. 266 No. 756 and his article *"L'enfant naturel sous la loi des droits sur les successions* in 1944 R. du B. 301; *McLaren v. Fortier* (Martineau, J., Superior Court), *op. cit.*; *Desjardins v. Schiller* 1912 19 R. de J. 231.

(85) *McLaren v. Fortier* (Superior Court), op. cit., at p. 315; *Desjardins v. Schiller, op. cit.*

(86) See *McLaren v. Fortier* (Superior Court), *op. cit.; Desjardins v. Schiller, op. cit. Rivard* in his book at p. 266 No. 757 and in his article, *op. cit.*, also recalls that exemptions are to be restrictively interpreted and that the English law concept of lineal issue understood in its plain sense excludes the natural child — at p. 264, Nos. 753, 754.

(87) See *Baudouin, op. cit.*, at p. 1101; *Orrell v. Tkachena* 1942 K.B. 621 at p. 627; *Bariteau v. Héritiers Bariteau* 1939 S.C. 496; *Town of Montreal West v. Hough* 1931 S.C.R. 113; *Rivard, op. cit.*, at p. 262 No. 747; *McLaren v. Fortier* (Superior Court) *op. cit.;* Lebel, Louis, *De la condition des enfants naturels en droit français et en droit québécois* 1962 5 Cahiers de Droit 79 at p. 64; Cosette, André, *Les notions d'égalité et de discrimination dans le droit successoral de la province de Québec* 65 R. du N. 431 at p. 434.

(88) See Quigg, Samuel, *The Law relating to succession duties in Canada*, 2 ed., 1937 at pp. 2, 8; Jameson, Michael, *Ontario Succession Duties*, 1959, at p. 7;

an interpretative strait-jacket is imposed by the words "stranger in blood to the deceased". The natural child must fall into one of the act's categories; however, if placed in s. 9 (3), it would seem to be an infringement of this provision of the act; but, if considered as part of the direct line, an important exception, juridically unfounded on its face, would exist to the general principle that in this matter the general law of persons is followed in so far as it is consistent with the fiscal act. The writers would therefore submit that an amendment to the act should be passed to resolve the dilemma and enable the natural child taxpayer to be apprised of his rights. (89) In the interim, the current practice of the succession duty department to grant the natural child the exemption is the more equitable solution.

To conclude, if the law of the domicile, again with regard to moveables, does not consider the natural child as belonging to the family, with rights of succession, he will be classified as a stranger under the Quebec *Succession Duties Act*, for legitimacy and its incidents is a question of status. (90) If the converse is true, it will also be recognized by the statute.

3. *Adopted children*

S. 10 of the *Succession Duties Act* sanctions in yet another branch of the law artificial penetration into the family by the technique of adoption. Its scope is important :

> "For the purposes of this act, the transmission owing to death to a person adopted by the deceased as his child, under the provisions of the Adoption Act (chap. 218) and of any amendment thereto or under any special act of the Legislature of Quebec, and to the consort of such adopted person, shall be deemed to be made in the direct line, and the rates set forth in subsection 1 of section 9 shall apply to such a transmission."

It is obvious, then, that the section mentions but a one-way trans-

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Sanagan, G. D., *The construction of taxing statues* 18 Can. Bar Rev. 43 at p. 44; *Maxwell on the Interpretation of Statutes* 10 ed., 1953 at p. 291; *The King and the Provincial Treasurer of Alberta v. Canadian Northern Railway Co.* 58 D. L. R. 624.

89) There are also repercussions on the natural parents since their privileges are equivalent to those of the natural child with regard to exemptions and rates.

0) See *Rivard, op. cit.*, at p. 262 No. 745.

mission, to the children adopted.(91) Is reciprocity denied to the adopting parent ? Secondly, what of transmissions from the natural parents, since the preponderance of the doctrine(92) is categorical that adoption in no way affects the right of the adopted person to succeed ab intestate to his natural parents ?

The first problem can only be understood in the light of S. 16 of the *Adoption Act* :(93)

> "From and after the judgment granting the adoption :
>
> 1) The parents, tutor or person entrusted with the custody and care of the child shall lose all the rights they possessed under the civil law, and be freed from all the legal obligations by which they were bound with respect to such child;
>
> 2) The child adopted shall in every respect be considered, with regard to such custody, obedience to parents and the obligations of children towards their father and mother, as the adopting parents' own child.
>
> 3) The adopting parents shall be bound to maintain and bring up the child as if it were their own."

Then, s. 18 of the same act leaves no doubt that the adopted child's new family status with succession incidents has reciprocal benefits :

> a) The property which he has acquired by himself, or by gift, will or inheritance from his adopting parents, or from one of them, as well as from those related or allied to his adopting parents or to one of them, shall devolve in accordance with the rules of the Civil Code to the persons who would have been his relatives if he had been born to his adopting parents in lawful wedlock."

At first sight, S. 10 of the fiscal act would appear to diverge from what would be the natural consequences of the parent-child relationship established by the *Adoption Act*. Nonetheless, some doctrinal authorities teach that the *Adoption Act* is of public order,(94) and that the parent-child relationship with its attendant tax consequences, once extant, cannot be rendered nugatory in the absence of a specific text. It would therefore seem that S. 10 of the fiscal act is merely declarative

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(91) Once adopted, the child succeeds to his adopted parents as if he were born of their marriage (S. 18 (1)) of the *Adoption Act* 1964 R. S. Q. c. 218. See also Paquette, Paul, *La loi d'adoption* 28 R. du N. 65 at p. 87; Lavallée, Armand, *Étude de notre système successoral actuel* 26 R. du N. 349 at p. 350.

(92) Mayrand, Albert, *Adoption et successibilité* 1959 R. du B. 409 at p. 422.

(93) 1964 R. S. Q. c. 218.

(94) *Demers, Donat, op. cit.*, at p. 416, and authorities cited.

and explanatory,(95) and that the adopting parents would fall into the direct line, in any event, by virtue of S. 9 of the same act.(96)

A rather curious legal anomaly, however, may issue from an adoption granted by means of a special act of the Legislature. While the adopted child would fall squarely within S. 10 of the fiscal act, both the succession and succession duty rights of the adopting parents would depend upon the terms used in the special act. Although they could not invoke S. 10 of the *Succession Duties Act*,(97) it is arguable that a general reference in the special act subjecting the rights and duties of the adopting parents to the provisions of the *Adoption Act* suffices to enable them to take advantage of S. 9 of the fiscal act. Credence would seem to be lent to this view of the writers by the recent practice(98) adopted by the Quebec Legislature of inserting in private acts of adoption this typical section :

> "The provisions of law respecting succession duties shall apply as if this act had not been passed." (99)

The next problem also poses certain difficulties. As stated, the adopted child has a double succession vocation.(100) S. 18 (2) (b) of the *Adoption Act*, moreover, enunciates that if the adopted person dies intestate, the property acquired by him by gift, will or *inheritance* from his natural parents and relatives shall devolve in the same way as if he had not been adopted. Thus, even though the child, once adopted, becomes "as the adopting parents' own child",(101) it is hardly

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(95) *Ibid.*, at p. 417. *Demers*, though, recognizes that the text (s. 10 of the fiscal act) is ambiguous and could conceivably reflect the intention of the legislator to restrict the exemption (possibly to remove a pecuniary motive for adoption — the writers).

(96) *Rivard, op. cit.*, p. 235 No. 649. Of course, de facto adoptions do not qualify the participants for the special privileges conferred by the *Succession Duties Act*.

(97) *Rivard, op. cit.*, at p. 236 No. 651.

(98) See 1963 S. Q. (11-12 Eliz. II) c. 138, 139, 140.

(99) The writers submit that such a section means that no bond between adopting parents and children would be deemed to exist for purposes of s. 9 of the fiscal act. However, s. 10 might continue to confer "direct line" benefits upon the adopted children, since the wording of s. 10 requires only the fact of existence of a special act to be operative. Still, it is readily conceded that this section in the private acts can also be interpreted as meaning that no adoption whatsoever has taken place in so far as succession duties are concerned, and thus even s. 10 would not apply. The reader is however reminded of Rule 596 of the Legislative Assembly which states that no private bill shall alter or repeal any general law or act.

(100) *Mayrand, Albert, op. cit.*, at p. 422; *Lavallée, op. cit.*, at p. 350.

(101) S. 16 (2) of the *Adoption Act*.

conceivable that the transmission from natural parent to adopted child could be considered other than in the direct line for succession duty purposes. (102)

Conversely, although the natural parents under S. 16 (1) of the *Adoption Act* lose all the rights they possessed under the civil law with respect to such child, it is contended that S. 18 (2) (b) prevails in succession matters, and clearly confirms their right to succeed to the child vis-à-vis certain property. (103) They logically should therefore be entitled to the favour accorded the "direct line" under the *Succession Duties Act*, especially since they are by no means strangers in blood to their natural child. (104)

Next, when some facets of private international law are delved into, it is easily perceived that adoption affects the status of the adopting parents, the adopted child and the natural parents. (105) The validity of the judgment of adoption, according to the majority of the authors, is to be governed by the cumulative application of the substantive conditions of the laws of the adopter's and adopted child's domicile. (106) Nonetheless, the case of *Schwartz v. Schwartz* (107) held that an adoption granted by judgment of a regular court in a foreign country has a binding effect upon persons resident and domiciled in the province and could be validly pleaded before the courts of Quebec. However, the litigation arose before the *Quebec Adoption Act* was first enacted, and consequently does not necessarily refute the majority view of the authors.

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(102) The *Adoption Act* does not imply anywhere that the child loses his "natural" succession rights.

(103) For a more elaborate discussion of property in matters of adoption, see *Paquette, Paul, op. cit.; Lavallée, Armand, op. cit.,; Mayrand, Albert, op. cit.*

(104) S. 9 (3) and see the discussion of this subsection with regard to natural children.

(105) See *Mayrand, op. cit.*, at p. 466. But see *Johnson, op. cit.*, at p. 233.

(106) *Mayrand, op. cit.*, at p. 466. Others prefer the law of the adopter, and others the lex fori — see *Batiffol, op. cit.*; Johnson, W. S., *Quebec Adoption Act and Domicile* 1956 R. du B. 5 at p. 12 and his book, *op. cit.*, at p. 236 : "... an adoption is governed by the law of the country where it takes place, and (that) the judgments of a foreign court are recognized by our law if they have been regularly rendered." The writers would suggest that perhaps this demarcation should be made : procedural conditions should be subject to the lex fori; the status of the parents as parents to the adopted child should be governed by the law of the domicile (C. C. 6 par. 4); and the status of adopted child and of natural parents who lose the child, should be determined by the domicile of the natural parents (or by the domicile of the child, if no parents) at the time the proceedings in adoption are instituted before a competent court.

(107) 1935 38 P. R. 341.

Lastly, it should be mentioned that S. 22 of the *Adoption Act* furnishes a conflict rule of successions. It sets forth an important derogation from C.C. 6 by providing that the law of the place of adoption will govern the succession rights of the adopted child. Thus, moveables presumably will not devolve vis-à-vis the adopted child, in accordance with the law of the domicile of the deceased. (108) Also, apparently this holds true for the child's right to succeed to his natural parents. Thus, at least in all these eventualities where the adopted child is considered as the adopting parents' own child by the law of the place of adoption, he will take his place in the "direct line" under the *Succession Duties Act*. (109) He will be similarly classified when he inherits from his own parents, but the fiscal rights of the latter and of the adopting parents, it is suggested, will follow the Quebec rules outlined above.

4. *Children by alliance*

This category was placed in the direct line in 1894. (110) The fiscal position of a child by alliance is to be discovered by perusing the principles of the Civil Code. Basically, just as marriage is the creator of the alliance, the death of the consort from whom the affinity has resulted destroys the alliance, (111) unless there were children born of the marriage, (112) in which case the alliance continues, even if the surviving consort subsequently re-marries. (113)

As regards the step-parents and step-children, the *Succession Duties Act* should be literally interpreted. (114) By strict analogy to the above, the death of the natural parent should remove the step-relationship, but practical policy would appear to dictate otherwise.

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(108) See, for example, *Rivard, op. cit.*, at p. 237 No. 653.

(109) *ibid.*, at p. 236 No. 652.

(110) See 1 R. du N. 174; Sirois, L. P., *Des droits sur les successions* 1898 4 R. L. n.s. No. 517 at p. 532.

(111) *Mignault, op. cit.*, at pp. 483 and ff. But see *Demers, Donat, op. cit.*, at p. 421, who maintains that the consort should remain in the direct line. This is the more equitable view.

(112) *Mignault, ibid.*

(113) See *Demers, Donat, op. cu.*, at p. 420 — The analogy of the obligation to pay an alimentary allowance to one's parents by alliance and vice-versa serves as the guide for establishing their respective rights under the *Succession Duties Act*.

(114) *ibid.*, at p. 421.

II. Property

The situs of property must be clearly distinguished from its distribution. The first affects what is taxable, (115) whereas the second determines how the property is to be taxed. The fundamental guidelines which concern the latter are that the laws of the province regulate the devolution of the immoveables (116) situate in Quebec, (117) whereas the transmission of moveables in subject to the law of the domicile of the deceased. (118) Nevertheless, to ascertain the property actually *transmitted*, it is expedient to first examine the property régime of the consorts. The organization of the distribution will then be touched upon, and particular attention will be allotted to the application of exemptions.

A – Matrimonial régimes

What may be characterized as "matrimonial property rights" and "matters of succession" are mutually exclusive concepts. Basically, only what is or is deemed to be transmitted by death is taxable. Thus, matrimonial covenants, apart from the aspect of gifts made in contemplation of death, are not subject to any duty. (119) The nature of these covenants depends upon the régime of property adhered to by the consorts. It is therefore proposed to summarize the cardinal principles respecting the matrimonial régime before discussing the principal particular covenants possible and their effects in certain marital circumstances.

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(115) Under the *Succession Duties Act*, S. 2 taxes all moveables and immoveables in the province, whereas S. 6 imposes a duty on moveables outside the province if the transmission is realized in the province — see foot-note 8. Immoveables outside the province cannot constitutionally be taxed by the province (see foot-note 8) although *all* property transmitted is included to determine the appropriate rates. See generally *Rivard, op. cit.*, at p. 30 No. 65.

(116) Which include immoveable rights — C. C. 381, 382, for example.

(117) C. C. 6 par. 1; *Rivard, op. cit.*, at p. 38 No. 80; *Mignault, op. cit.*, at p. 88; *Lafleur, op. cit.*, at p. 127. *Pouliot v. Cloutier*, 1944 S. C. R. 285. This rule is in fact a bilateral one — see *Demers, Donat, Chronique de droit fiscal* 55 R. du N. 241 at p. 247.

(118) C. C. par. 2; *Rivard, op. cit.*, at p. 30 No. 65; *Lafleur, op. cit.*, at p. 127; see, for example, *Pouliot v. Cloutier, op. cit.*, *Kerwin, J.*, at p. 289 : "This, I think, not only correctly expresses the law, but is a practical rule that in the absence of a contract, either express or implied, by which proprietary rights are acquired, the law of the domicile at the time of death should determine whether any limitation was imposed upon the disposing power of a testator as to moveables."

(119) See *Sirois, L. P., op. cit.*, at p. 517; also 1 R. du N. 162 at p. 164; *Rivard, op. cit.*, at p. 91 No. 211.

1. *The governing law*

The traditional rule (120) that the law of the matrimonial domicile, which is determined by that of the husband at the time of the marriage, governs the property rights of the consorts, (121) was recently re-iterated in *Delhalle v. Mathes.* (122) Thus, persons domiciled in the province of Quebec who marry without a marriage contract are presumed to have stipulated community of property under the Civil Code, (123) regardless of the place of celebration. (124) The matrimonial régime of persons with a foreign domicile, on the other hand, is subject to the law of their domicile. (125) However, if there is a contract and its terms are

(120) Which is essentially but a presumption — see *Castel, J. G.*, 5 M. L. J. 1 at p. 4.

(121) See *Johnson, op. cit.*, at pp. 317-318 and jurisprudence cited therein; *Trottier v. Rajotte, op. cit., O'Meara v. O'Meara* 1916 49 S.C. 334; *Castel, J. G.* 5 M. L. J. 1 at p. 4; *Lafleur, op. cit.*, at pp. 163-164; *Loffmark & McKay, op. cit.*, at p. 577. See also *Lister v. McAnulty* 1940 78 S.C. 577; 1943 K.B. 184; 1944 S.C.R. 317; *Pouliot v. Cloutier* 1944 S.C.R. 284; *Wadsworth v. McCord* 1886 12 S.C.R. 466 at p. 479 : "That the rights of the husband and wife are determined by the domicile of the husband at the time of the marriage and not by the place where the marriage was celebrated." Note that the matrimonial domicile can be the projected domicile of the consorts if the intention of the husband to change domicile is manifest at the time of the celebration : *Lafleur, op. cit.*, at pp. 163-164; *Lachance v. Leboeuf* 1914 46 S.C. 421; *Brown v. Walkman* 1929-30 32 P.R. 199; *Castel, J. G., Les conflits de lois en matière de régimes matrimoniaux dans la province de Québec* 1962 R. du B. 233 at p. 256. This last writer points out that in reality the conventional property régime partakes of the nature of a juridical act, and is in the realm of the autonomy of wills. (C.C. 8; as to form C.C. 7). It is not a question of status. In the case of the legal régime (when no contract exists) the patrimonial aspects of marriage should be characterized as a juridical fact — see *Batiffol, op. cit.*, at p. 685; *Peters v. Cité de Québec* 1908 33 S.C. 361, where C.C. 8 was applied; *Lachance v. Leboeuf, op. cit.* In effect, the jurisprudence considers that the "wills" of the parties express themselves by the choice of the matrimonial domicile, and ignores the laws of the country implicitly chosen in fact by the parties to regulate their matrimonial régime. As for the legal régime, the matrimonial domicile is considered the only criterion for determining the presumed will of the parties. The *legal régime* thus becomes a juridical fact localized at the place of the matrimonial domicile. At all events, *Castel* feels that the matrimonial domicile should be the first domicile of the consorts after the marriage i. e. where they intend to establish themselves after the marriage.

(122) 1963 S.C. 261.

(123) C.C. 1260.

(124) *Trottier v. Rajotte, op. cit.; Pouliot v. Cloutier, op. cit., Sura v. M.N.R.* 1962 S.C.R. 65; *Castel, J. G.*, 1962 R. du B. 233 at p. 250. Note that the capacity to conclude a marriage contract or settlement is governed by the law of each party's domicile at the time of contracting — C.C. 6 par. 4, *Castel J. G.*, 5 M. L. J. 1 at p. 4.

(125) See *Wadsworth v. McCord* 1885-86 12 S.C.R. 466, 1889 14 A.C. 631; *Eddy v. Eddy* 1898 4 R. de J. 78; 1898 7 K.B. 300; 1900 A.C. 299; *Lister v.*

sufficiently precise, or if there is a direct indication therein of the law to which the parties wish to refer, effect will be given thereto. (126) Otherwise, the will of the parties must be looked for. (127)

There are two other points which must be stressed. Firstly, the nature of the situation of the property of the consort does not alter the rights of the parties resulting from the matrimonial régime. (128) Consequently, the law of the matrimonial domicile will, with regard to marital propertly rights, regulate even immoveables in Quebec. (129) Secondly, the interpretation or effect of the marriage contract or settlement cannot be varied by a subsequent change of domicile, (130) although the consorts may alter or transform their matrimonial régime if permitted by the law of their new domicile, in which case such alteration must be respected even in the courts of the original domicile. (131)

2. *Particular covenants*

In the light of the aforementioned principle that taxability requires "a transmission", (132) the particular marriage covenants as such (133) escape imposition. (134) For example, the subject-matters of the clause of mobilization (135) and of the stipulation that one consort or his heirs shall be entitled only to a certain sum in lieu of all rights of communi-

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McAnulty, op. cit.; Poulliot v. Cloutier, op. cit.; Valenti v. L'Oddo 1948 S.C. 134; *Bélanger v. Carrier* 1954 Q.B. 125.

(126) See *Johnson, op. cit.*, at p. 311; *Castel, J. G.*, 1962 R. du B. 233 at p. 258.

(127) *Castel, J. G.*, ibid. See also *Proulx v. Rivest* 1920 58 S.C. 418; *Stephens v. Falchi* 1937 3 D.L.R. 605; 1938 S.C.R. 354; *Tétrault v. Baby* 1940 78 S.C. 280; *Turgeon, H., Loi du lieu du contrat de mariage* 43 R. du N. 89; *Vézina v. Trahan* 1946 K.B. 14; 1947 3 D.L.R. 769.

(128) *Lafleur, op. cit.*, at p. 164.

(129) *Castel, J. G.*, 5 M.L.J. 1 at pp. 5, 7 and in 1962 R. du B. 233 at p. 260; *Astill v. Hallée* 1877 4 Q.L.R. 120; *McMullen v. Wadsworth* 1899 14 A.C. 631; *Bélanger v. Carrier* 1954 Q.B. 125.

(130) *Castel, J. G.* 5 M.L.J. 1 at p. 5 and in 1962 R. du B. 233 at p. 260; *Gauvin v. Rancourt* 1953 R.L. 517; *Rivard, op. cit.*, at p. 87 No. 202.

(131) *Johnson, op. cit.*, at p. 315.

(132) SS. 2, 6, of the *Quebec Succession Duties Act*.

(133) And exclusive of all liberalities i.e. gifts inter vivos deemed transmitted and gifts in contemplation of death. The administration must take these covenants into account to establish the respective rights of the spouses and the patrimony of the deceased — see *Rivard, op. cit.*, at p. 91 No. 211.

(134) See C.C. 1384 - 1425; *Comtois, Roger, Traité théorique et pratique de la communauté de biens* at p. 258; *Sirois, L. P., op. cit.*, at p. 520.

(135) C.C. 1390 - 1395.

ty (136) cannot be taxed. (137) Nor can duties be imposed upon contractual variation to the ordinary rule of equality in the community. (138)

Some question however arises as to the nature of conventional preciput. (139) *Rivard* would confine its definition as a marriage covenant to the case where the succession is not obligated in any way to pay it. (140) However, it is submitted that the terms of C.C. 1401 & 1402 should perhaps be more literally observed and given their full effects in the matter of duties. The word "regarded" in C.C. 1402 would not appear to deprive preciput of its juridical nature as a marriage covenant, and, if this is correct, there would seem to be no justification for treating it differently for fiscal purposes from other marriage covenants.

Lastly, opinion is divided as to dower. *Rivard* (141) claims it is a right of survivorship and taxable, while *Sirois* (142) contends it can be characterized as neither a gift or a matter of succession. At first

(136) C.C. 1408.

(137) *Rivard, op. cit.*, at p. 91 Nos. 212, 213.

(138) *Loffmark & McKay, op. cit.*, at p. 585; *Sirois, L. P., op. cit.*, at p. 520 : "Ainsi, lorsque par leur contrat de mariage fait en vertu des articles 1406 et suivants du Code civil, les époux stipulent que la totalité ou une part plus forte que la moitié ou l'usufruit de la part du premier mourant dans les biens dépendant de la communauté appartiendra au survivant... une telle disposition n'a pas le caractère de la donation à cause de mort. C'est une simple convention de mariage qui ne donne lieu à aucun droit." See also *Rivard, op. cit.*, at p. 92 No. 217, who confirms that effect will be given to the stipulation that the whole of the community shall belong to the survivor (C.C. 1411) for fiscal purposes "à condition qu'elle soit aléatoire et non pas seulement au bénéfice exclusif d'un seul des époux." This condition is debatable in the face of the terms of C.C. 1411, particularly when it is considered that the consorts, once the marriage takes place, cannot dispose of that property by will or consider it part of their successions otherwise than by following the letter of the marriage contract. Note, though, that gifts made in the marriage contract are subject to duties unless they are executed in full at least 5 years before the date of death — see S. 15 (c) of the *Succession Duties Act; Rivard, op. cit.*, at pp. 203, 204; *Courey v. A. G. for the Province of Quebec* 1949 S.C. 421. But see *Sabourin v. Périard* 1947 K.B. 34 where it was held that the obligation undertaken by the husband in the marriage contract was onerous, having been made in consideration of the wife's renunciation of dower. See also *Demers, Donat*, 56 R. du N. 138 at p. 143; C.C. 1401-1405.

(139) C.C. 1401 & ff.

(140) *op. cit.*, at pp. 93-94. Otherwise, he claims, the preciput becomes a "gain de survie", transmitted by death and thus taxable. He would seem, however, to have interpreted C.C. 1401, 1402 too narrowly. See also *Sirois, L. P., op. cit.*, at p. 520; *Loffmark & McKay, op. cit.*, at p. 586.

(141) *op. cit.*, at p. 94 No. 224.

(142) *op. cit.*, at p. 520.

glance, in the presence of C.C. 1432, which states dower is to be regarded as a marriage covenant, the writers would hesitate to endorse Rivard's view.

3. *Fluctuations in the conjugal status*

Judgments of separation from bed and board or of property, decrees of nullity of the marriage and divorce are all susceptible of affecting the quantum of property transmitted at death.

In Quebec, separation from bed and board automatically carries with it separation of property as well as other economic consequences. (143) However, only the wife can obtain separation of property, if certain conditions are met. (144) It has recently been held that if the parties are domiciled in Quebec, a judgment in separation as to bed and board rendered in the foreign country where the consorts reside will not be recognized. (145) However, the writers would prefer the view expressed in *Ryan v. Pardo* (146) that Quebec law is not ". . . definitely antagonistic to an action in separation being instituted and maintained between persons not domiciled in this province, before a tribunal having jurisdiction ratione materiæ and personæ irrespective of the question of their domicile."

In the case of annulled marriages, the consort in good faith can claim his share in the community (147) and the advantages and gifts stipulated in his favour in the marriage contract become executory. (148)

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(143) C.C. 208.

(144) C.C. 1311 & ff.

(145) *Morrier v. Ronalds* 1965 S.C. 481; *Johnson, op. cit.*, at p. 291 : "A decree of separation as to property or as to bed and board pronounced by a competent foreign court having, in our view, jurisdiction (which for him seems to require domicile) over the parties, would be recognized in Quebec." And see the cases cited by him, especially *Goudron v. Lemonier* 1885 1 M.L.R. (S.C.) 160 — separation of property.

(146) 1957 R.L. 321 at p. 340, *Brossard, J.* See also the dictum of the Privy Council in *Le Mesurier v. Le Mesurier*, 1895 A.C. 517 that "in the opinion of their lordships a residence short of domicile would, under certain circumstances, be recognized as giving jurisdiction to decree a separation." and *Castel, J. G.*, 5 M.L.J. 1 at p. 13.

(147) See *Comtois, op. cit.*, at p. 235.

(148) *ibid.*, at p. 236; *Baudouin, op. cit.*, at p. 195; *Mignault, op. cit.*, at p. 457; *Brière, op. cit.*, at p. 225; *Morin v. La Corporation des Pilotes* 1882 8 Q.L.R. 222; *Stephens v. Falchi* 1938 S.C.R. 354; *L. v. G.* 1948 K.B. 413; *Wilson v. Partridge* 1959 S.C. 17. When there is a plurality of communities, it would seem that the community rights of the first wife are preserved in toto and the second wife could only claim on the balance. — See *Rivard, op. cit.*, at p. 28.

Divorce dissolves the community of property which existed between the consorts. (149) However, the consort against whom the divorce is pronounced does not, by that fact alone, forfeit the advantages bestowed upon him by the marriage contract, (150) and thus to obtain such forfeiture, the other consort must be granted a judgment in separation as to bed and board before the divorce. (151) Finally, while a part of the jurisprudence seems to attribute to divorce all the effects of natural death, so that gifts in the marriage contract payable at death which have not yet been executed become immediately exigible upon divorce, (152) the prevailing opinion seems to be that divorce cannot be entirely assimilated to death, and so such gifts are not exigible until death. (153)

Next, agreements between the consorts before the divorce to divide the community are absolutely null as being contrary to C.C. 1338 and C.C. 1265. (154) However, obligations arising from agreements after the divorce will, according to the terms of the contract and the circumstances, be allowed as deductions when calculating the net value of the estate, (155) at least in the case of non-resident estates. (156)

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(149) *Mertens v. Herscovitch* 1959 Q.B. 263; *Bilodeau v. Tremblay* 1962 S.C. 354; *Dussault v. Clark* 1955 S.C. 325; *Corber v. Margolick* 1950 S.C. 369; *Baudouin, op. cit.*, at p. 200.

(150) *Paradis v. Lemieux* 1955 S.C.R. 282 : "Le mari qui a obtenu du parlement un divorce motivé par l'adultère de sa femme ne peut opposer à la demande de partage de la communauté, subséquemment formée par cette dernière, le fait de cette inconduite pour obtenir un jugement prononçant la déchéance autorisée par l'article 209 C.C. dans le cas de séparation de corps." See also *Comtois, op. cit.*, at p. 232.

(151) *Comtois, op. cit.*, at p. 232.

(152) *Maloney v. Rassie* 1961 R.L. 169 (a 1951 case).

(153) *Tollett Power-Williams v. Power-Williams* 1960 Q.B. 800; *Dussault v. Clark* 1955 S.C. 325; *B. v. S.* 1960 R.L. 444.

(154) See Mayrand, A., *Conventions entre époux en prévision de leur divorce et conventions entre divorcés* 1960 R. du B. 1 at p. 5 and p. 27; *Rivard, op. cit.*, at p. 271 No. 773. However, although the Court of Appeal upheld this principle, it held valid an expression of the parties' intention to divide the community after the divorce in *Mertens v. Herscovitch* 1959 Q.B. 263. However, the distinction made by the courts was tenuous on the facts of the case, and was justly criticized by *Mayrand, op. cit.*, at p. 7. Yet, this writer is of the opinion that an agreement to pay an allowance for life to the other consort would be valid (provided it is not a simulated gift) as either the execution of a delictual or natural obligation — at pp. 14-15.

(155) *Rivard, op. cit.*, at p. 271 No. 774.

(156) The practice of the department is to consider the obligations of Quebec domiciliaries as alimentary and therefore as terminating upon the death of the deceased. However, *Mayrand, op. cit.*, at pp. 21, 22 feels that the obligation to pay a life-rent (constituted upon the life of the surviving consort C.C. 1902) has a juridical basis different from the alimentary

B – The taxable distribution

1. *Testate and intestate successions*

When a will exists, its formal validity is governed by the locus regit actum. (157) Its intrinsic validity, (158) on the other hand, is subject to the rule that moveable property is governed by the law of the domicile of its owner, and immoveable property by the lex sitæ. (159)

The devolution of intestate successions is also subordinate to the principle enunciated in C.C. 6, i.e. moveables are dealt with according to the law of the foreign domicile of the deceased, and immoveables according to the law of their situation. (160)

The wife in order to inherit by intestate succession must renounce the community of property, insurance proceeds in her favour and all rights of survivorship. (161) But, the obligation of the husband is even more onerous under Quebec law : he must either pay into the mass his share in the community, if it is accepted by the wife's heirs, or abandon to the mass all the rights and advantages conferred on him by the marriage contract, as well as insurance proceeds. (162)

2. *Rates and exemptions*

Each beneficiary to whom a taxable portion of the estate is transmitted is personally and only liable for the duties due on the property

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obligation. Thus, the obligation to pay the life-rent, in the absence of a contrary stipulation, is not extinguished by the death of the debtor and must be assumed by the succession — See C.C. 1912, 777, 795.

(157) C.C. 7; *Johnson, op. cit.*, at p. 419; *Ross v. Ross* 1893 2 Q.B. 413; 25 S.C.R. 307; *Bellefleur v. Lavallée* 1958 Q.B. 53.

(158) Such matters as the "quotité disponible".

(159) *Johnson op. cit.*, at p. 426. It is acknowledged that the above rules are subject to Quebec public policy in the matter. See also *Lafleur, op. cit.*, at p. 138.

(160) *Lafleur, op. cit.*, at p. 127; *Johnson. op. cit.*, at p. 459; *Hawthorne v. O'Borne and Dion* 1911 40 S.C. 503; *O'Meara v. O'Meara* 1916 49 S.C. 334; Lavallée, Armand, *Le règlement des successions* 28 R. du N. 302 at p. 369.

(161) C.C. 624c. Note that if the husband dies a minor, she cannot succeeed to him (C.C. 624d) although minors can seemingly in their marriage contract insert a valid contractual institution in favour of each other — see *Cosette, A., op. cit.*, at p. 437. In effect, gifts in contemplation of death in marriage contracts (C.C. 597, 757) constitute the third basic mode of transmission. See also C.C. 630.

(162) C.C. 624c.

transmitted to him.(163) Theoretically, then, the estate is divided for tax purposes into as many assessments as there are beneficiaries. The duty applicable is the composite of two rates, (164) the main duty, which is based on the aggregate value of the estate, (165) and an additional duty, which is determined by the amount transmitted to the particular beneficiary. There are three categories of beneficiaries, for which the criterion is the closeness of relationship to the deceased. And the more distant the relationship, the higher the rate. As already intimated, then, it is the group of persons collectively designated as the "direct line" and dominated by the family which is the recipient of the most favourable treatment under the act. S. 11 of the act is the principal source of the encouragement offered to family transmissions :

> In all estates the dutiable values of which do not exceed fifty thousand dollars, transmitted, in whole or in part, to the persons mentioned in subsection 1 of section 9, the following exemptions shall be granted with respect to the said persons, namely :
>
> a) in all cases, an exemption from all succession duties on twenty thousand dollars;
>
> b) in addition, an exemption from all succession duties on an amount of fifteen hundred dollars for each child, in the first degree, under twenty-five years of age, domiciled in this Province left by and surviving the deceased.
>
> In all other cases where the aggregate value of the property transmitted to the persons mentioned in subsection 1 of section 9 does not exceed the amount of the above mentioned exemptions, no duties shall be payable by the said persons on the said property or on the transmission thereof; if the aggregate value of the property thus transmitted exceeds the amount of the said exemptions, the amount of duties exigible from the said persons on the said property or on the transmission thereof must be limited to the said excess.
>
> Where the property transmitted to the persons mentioned in subsection 1 of section 9 is situate partly within and partly outside this Province, the hereinabove exemptions shall be rateably apportioned as between the said property.(166)

The principal effect of this important section can be summarized in the following propositions : 1) no duty is payable, whatever be the amount of the whole estate, if the total transmitted to the direct

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(163) *S. 30 of the Succession Duties Act.*

(164) S. 9 of the act. See generally on this subject *Rivard, op. cit.*, at pp. 237 & ff.; *Demers, Donat, op. cit.*, at pp. 413 & ff.; *Sirois, L. P., op. cit.*, at p. 517.

(165) See S. 14 of the act.

(166) For the legal history of succession duty exemptions, consult Demers, Donat, *Analyse des modifications apportées aux taux des droits de succession dans la province de Québec* 52 R. du N. 329; *Chronique de droit fiscal* 56 R. du N. 86; Lavallée, Armand, *Droits sur les successions*, 37 R. du N. 529.

line does not exceed the amount of the exemptions; (167) 2) if the total value transmitted to the direct line exceeds the amount of the exemptions, but the dutiable value (168) of the estate does not exceed fifty thousand dollars, the exemptions are granted and the individuals in the direct line (169) pay duties on the balance; 3) if the total value transmitted to the direct line exceeds the amount of the exemptions, and the dutiable value of the estate exceeds fifty thousand dollars, there is no exemption whatsoever; however, the amount of duties payable cannot reduce the total value actually transmitted to the direct line to a figure below the exemptions that would have been granted had the dutiable value of the estate been less than fifty thousand dollars. (170)

Conclusion

The Bélanger report (171) has recommended no less than a complete re-drafting of the *Succession Duties Act*. Furthermore, it submitted certain concrete suggestions which directly concern the family and it might prove helpful to refer to them briefly.

The commission proposes that the exemption be transferred from a "class" to a "personal" basis. Secondly, these deductions would be granted regardless of the total amount of the estate. Next, the basic exemption for the surviving spouse is to be $75,000; (172) however, single, widowed or separated heirs who lived with the deceased and ran his household for more than five years should receive the same treat-

(167) See *Rivard, op. cit.*, at p. 245 No. 678.

(168) Which excludes legacies, gifts and subscriptions for religious, charitable or educational purposes, since these are exempt from duties under S. 13 of the act. See also *Rivard, op. cit.*, at p. 243 No. 674. Moreover, note that the children under 25 need not inherit for the direct line to enjoy the benefit of the additional exemption. Also, they need only be conceived and be born viable (C. C. 608).

(169) Theoretically, the amount of the exemption given the line is apportioned among the individual beneficiaries; however, in so far as the administration is concerned, the problem is academic because the additional rate is the same for all such beneficiaries up to $50,000, and, unless demanded, no separate calculation is made for each direct line beneficiary.

(170) See *Demers, Donat*, 56 R. du N. 86 at p. 95.

(171) Rapport de la Commission royale d'enquête sur la fiscalité, Québec, décembre, 1965.

(172) A notre avis, les abattements à la base devraient être beaucoup plus élevés qu'à l'heure actuelle afin de tenir compte davantage de la situation familiale du défunt, ainsi que de l'aide qu'il a reçue de son conjoint et de ses enfants.

ment as a spouse, which is clearly a recognition of the "de facto" family, the equity of which is scarcely arguable.

Children are also meted out a more favourable fiscal prescription : the basic exemption for each surviving child aged twenty years and under would be $25,000, which exemption would then decrease by $3,000 for each year of age to $10,000 at age twenty-five and remain at that level thereafter. Notwithstanding this, the deceased's children suffering from a permanent physical or mental disability would be granted a $25,000 basic exemption. Furthermore, if the children have become both fatherless and motherless, the basic exemption, according to the commissioners, should be doubled. Then, children adopted "de facto" should be entitled to the same right of preferential treatment as those adopted "de jure"

Finally, two other measures proposed by the commission are essentially common-sense suggestions : the surviving spouse would have the right to the exemption granted to any children who remain his dependents to the extent that such exemption is not used by the children (e.g. if they do not inherit) ; secondly, it is recommended that the assets of an estate opening within a short time of the first estate should be valued at a reduced amount provided the assets thereof consist of property which is still identifiable and which has been transferred in the direct line.

There can be little doubt that the commissioners have endorsed the principle that a special régime of concessions should apply to the family. Moreover, the application of this principle has been conceived by them in more realistic terms, from the point of view of both economic effectiveness and social composition. Perhaps the most fundamental change proposed, however, is the technical suggestion that the ceiling beyond which exemptions should not be granted be abolished. The present government, though, indicated in the budget speech of March 31, 1966, that it might not accept this alteration of the tax structure when it raised the dutiable value limit in S. 11 to $75,000. While it is conceded that the line must be drawn somewhere, the writers would submit that the latter policy too easily breeds an "all or nothing" reaction on the part of taxpayers, besides the evident prejudice it causes to those barely exceeding the exemption limit. On the other hand, the commission's proposal constitutes a more just gradation of the responsibilities to be borne by the already favoured (and rightly) family member called upon to pay the assessment. In the final analysis, none-

theless, even if the Bélanger commission's recommendations are implemented, the state, although it might consent to tread more lightly upon "family" transmissions, nevertheless would insist upon its proper "successory" vocation at the last distribution of each member's patrimony.