



Québec, May 17, 2013

Mr. Luc Ferland
Chair
Committee on Institutions
Hôtel du Parlement
1st floor, Bureau 1.65
1045 Rue des Parlementaires
Québec, Québec G1A 1A4

Subject: Bill 35 – An Act to amend the Civil Code as regards civil status, successions and the publication of rights

Mr. Chair,

Part of the Québec Ombudsman's mandate is to study bills and draft regulations presented in the National Assembly or published in the *Gazette officielle du Québec*. When considered necessary, the Québec Ombudsman intervenes under section 27.3 of its constituting Act, which confers the power to call to the attention of the chief executive officer of a public body or to the attention of the Government the necessity of such legislative, regulatory and administrative reforms deemed to be of public interest.

I therefore have studied Bill 35, An Act to amend the Civil Code as regards civil status, successions and the publication of rights, presented by the Minister of Justice on April 17, 2013. I will begin by specifying that my comments exclusively concern the aspects of the bill related to civil status. I make no comment on the other provisions of the bill.

I first wish to express my satisfaction regarding the provisions concerning the new powers granted to the Registrar of Civil Status in matters of issuing a certificate of change of designation of sex and an act of death. The amendments proposed in this regard give effect to recommendations initially made by the Québec Ombudsman in the 2006-2007 and 2007-2008 Annual Reports¹.

¹ LE PROTECTEUR DU CITOYEN, *Annual Report 2006-2007*, pp. 72-74; *Annual Report 2007-2008*, pp. 62-63.

However, the legislator could seize the opportunity offered by this bill to resolve two other problems, which I bring to your attention.

CHANGE OF FAMILY NAMES OF NEWBORNS

I find the bill provides for the amendment of Articles 63, 67 and 73 of the Civil Code of Québec² (hereinafter "Civil Code") so that the publication requirements no longer apply for cases where the change request is manifestly related to the modification of sexual identity. I endorse this amendment.

In my opinion, however, another exception to the publication requirements should be included in the Civil Code.

It has been necessary for the Québec Ombudsman to intervene several times since 2004 for the Registrar of Civil Status to take cultural specificities into account upon registration of a newborn's name. In certain cultures, family names are feminized or masculinized according to the person's sex. For example, a father of Russian origin with the family name *Safin* cannot choose the family name *Safina* for his daughter in Québec, although this is the custom in his country of origin and although, in his community in Québec, the family name *Safin* for a female is regarded as ridiculous.

According to Article 51 of the Civil Code, it is not always possible to give a feminized or masculinized name. However, ever since the Québec Ombudsman's interventions, parents wishing to register a newborn by feminizing or masculinizing the family name chosen for their child are informed of the possibility of obtaining a change of name by way of administrative process (Article 58 of the Civil Code), after the newborn's registration according to the provisions of Article 51. To do this, the parents must satisfy the obligations of the Civil Code, the *Regulation respecting change of name and of other particulars of civil status*³ and the *Tariff of duties respecting the acts of civil status and change of name or of designation of sex*⁴. These obligations include the applicant's obligation to publish notice of his application notice once a week for two consecutive weeks in the *Gazette officielle du Québec* and in a newspaper published or distributed in the judicial district where the applicant is domiciled⁵. This obligation results in fees of approximately \$225.

In my opinion, this requirement is useless. The purpose of publication in the *Gazette officielle du Québec* and in a local newspaper is to protect the rights of third parties by informing them of the request for a change. What third party really has an interest in knowing the change of name of a newborn?

² Chapter CCQ-1991.

³ CCQ, r. 4.

⁴ CCQ, r. 10.

⁵ CCQ, r. 4, Section 5.

Therefore, the Québec Ombudsman recommends:

R-1 That the Civil Code of Québec be amended to exempt the parents of a newborn less than six months old from the current publication requirements. For this purpose, Articles 63 and 67 of the Civil Code of Québec should be amended to add an exemption from publication in the case of an application for a change of name of a newborn by way of administrative process.

CANADIAN CITIZENSHIP AND CHANGE OF SEX

The bill proposes to change the criterion of domicile in Québec currently applicable under Article 71 of the Civil Code in order to obtain the change of designation of sex and given name appearing on an act of birth⁶. During the past year, the Québec Ombudsman has received complaints regarding another criterion stipulated in this article, that of Canadian citizenship.

These complainants, who are permanent residents in Canada, cannot apply for a change to the Registrar of Civil Status because they have not yet obtained their Canadian citizenship. However, they have undergone “surgical operations [in Quebec] involving a structural modification of [their] sexual organs”⁷, and the cost of these operations was defrayed by the Régie de l’assurance maladie du Québec (RAMQ).

I am concerned about the incoherence with which these individuals are confronted. On the one hand, the Québec State assumes the costs associated with these surgical operations, but on the other hand, it refuses to issue the resulting official documents. If the RAMQ has covered these operations since 2009, this is because the necessity is recognized to help persons with gender dysphoria who make the decision – at the end of a long process supervised by health professionals – to modify their body so that it conforms to their identity⁸. The impossibility of obtaining coherent legal recognition from the State contributes to their marginalization, particularly when seeking employment.

⁶ *Op. cit.* note 1, Annual Report 2006-2007.

⁷ This is another criterion set out in Article 71 of the Civil Code.

⁸ Canadian Psychological Association. “Gender Dysphoria in Adolescents and Adults”, [Online]. <http://www.cpa.ca/lapsychologiepeutvousaider/genderdysphoria/>.

Therefore, the Québec Ombudsman recommends:

R-2 That the Civil Code of Québec be amended so that permanent residents domiciled in Québec and who have undergone the operations required for a sex change can avail themselves of the provisions of the Civil Code regarding the change of given name and designation of sex.

Mr. Chair, please accept my best regards.

The Ombudsperson,

Original signed

Raymonde Saint-Germain

c.c. Mr. Bertrand St-Arnaud, Minister of Justice
Mr. Stéphane Bédard, Government House Leader
Mr. Pierre Moreau, Official Opposition House Leader
Mr. Gérard Deltell, House Leader of the Second Opposition Group
Ms. Nathalie G. Drouin, Deputy Minister of Justice
Mr. Reno Bernier, Registrar of Civil Status
Ms. Anik Laplante, Secretary of the Committee on Institutions