

The Ministère de la Justice

The primary mission of the Ministère de la Justice is to ensure the adherence to the rule of law in Québec society and to preserve a credible and dependable system of justice in Québec in which individual and collective rights are respected.

More specifically, the Ministère:

- advises the government and its ministers on the legality of their actions and on drafting laws and regulations;
- upholds judicial activity and supports the Minister in his duties as Attorney General in civil matters, particularly in representations before the court;
- since March 15, 2007, implements policies, orientations and general measures regarding criminal and penal matters;
- manages international agreements and accords in the areas of judicial cooperation, the reciprocal enforcement of support and international child abductions;
- registers and keeps state documents, proclamations, acts of civil status, commissions under the Great Seal, letters patent or any other document that must be registered by the government;
- is responsible for maintaining the Register of personal and movable real rights and the registry of lobbyists, as well as administering governmental public key infrastructures.

On March 15, 2007 *An Act respecting the Director of Criminal and Penal Prosecutions* came into effect, creating this official responsibility. The Director leads criminal and penal proceedings in Québec on behalf of the State, and exercises its functions with the independence conferred on it by the act, under the general authority of the Minister of Justice and the Attorney General. The Director is by virtue of office “Deputy Attorney General” for criminal and penal prosecutions. In February 2007, the government appointed the first Director of Criminal and Penal Prosecutions for a seven-year mandate beginning March 5, 2007.

The Ministère is also responsible for the application of the *Crime Victims Compensation Act*. However, determination of eligibility and the processing of claims is the responsibility of the Direction de l’indemnisation des victimes d’actes criminels of the Commission de la santé et de la sécurité du travail.

COMPENSATION OF VICTIMS OF CRIME

MAJOR ADVANCES

The year 2006-2007 included the May 9 tabling of Bill 25, *An Act to amend the Crime Victims Compensation Act and other legislative provisions*. It was passed on December 13, 2006.

The Québec Ombudsman took advantage of the tabling of the bill to reiterate some of its recommendations.

In a June 12, 2006 letter to the Minister of Justice, the Ombudsperson commented on improvements made by Bill 25. In particular, she pointed out that the increase in compensation paid to cover funeral expenses and recognition of access to psychotherapeutic rehabilitation measures for the close relatives of victims were significant advances. She believed that these changes gave concrete expression to the will of the people to support victims and their close relatives.

Furthermore, she emphasized the importance of broadening the notion of “victim” to include close relatives. She recommended that the notion of “close relative” be defined in the law rather than in a regulation, a recommendation that was followed. Today the definition of “close relative” appears in the amended law and closely resembles the definition proposed by the Ombudsperson

Bill 25 proposed that the reimbursement for funeral expenses be increased to \$3,000 from the \$600 provided for in the existing law. While this was a significant first step, the Québec Ombudsman reiterated its proposal that coverage for funeral expenses match that paid for traffic accident victims, that is, \$4,309 in 2007. When the law was passed, the coverage for funeral expenses was the amount originally proposed by Bill 25, or \$3,000, to be increased on January 1 of each year.

Finally, the Ombudsperson suggested that the bill include an amendment so that reconsiderations of decisions could be brought before the Tribunal administratif du Québec, as is the case for the Société de l'assurance automobile du Québec and the Régie des rentes du Québec. The Minister referred this question for study to the taskforce responsible for reviewing the system for compensating victims of crime.

Following the adoption of the law, the final version of the *Regulation respecting psychotherapeutic rehabilitation of close relations of crime victims* was published in the *Gazette officielle du Québec* on March 7, 2007.

All provisions of the law, including the regulations for its application, came into force on March 22, 2007, and their effect is retroactive to May 9, 2006, the date the bill was tabled. Overall, the regulations respond to the Québec Ombudsman's concerns. The Commission de la santé et de la sécurité du travail must report to the Minister of Justice on the application of psychotherapeutic rehabilitation measures two years after they come into force, therefore in 2009. The Québec Ombudsman will pay close attention to this report. Until then, it will monitor the application of the regulations through citizen complaints.

THE QUÉBEC OMBUDSMAN'S PRESENTATION TO THE TASKFORCE

The Minister established a taskforce to review compensation for victims of crime. The Ombudsperson offered the Minister her assistance and indicated her desire to meet the taskforce. As a result, on February 7, 2007, the Québec Ombudsman presented its comments to the taskforce. It reaffirmed the positions from 2002 and made new recommendations to modernize the crime victims compensation system.

Compensation from this system is still based on the provisions of the *Workers' Compensation Act*, which dates back to 1931. The Québec Ombudsman is concerned that these rules for compensation are out of date and do not reflect contemporary economic, legislative and social realities. In terms of the public compensation plans within its jurisdiction, the Québec Ombudsman is very concerned about inequity among citizens who, for similar injuries and needs, are compensated differently depending on the nature of the incident and the source of financing for the program in question.

And yet, in Québec, the legislature has stated that crime is a social risk, and its consequences must be assumed collectively. As a result, a public compensation plan must offer fair and equitable compensation both to individuals and to the community. Specifically, this plan must help victims of crime return to their normal lives as soon as possible and under the best conditions possible. Assistance, particularly financial, must adequately cover the victim's physical and psychological injuries, and, in certain cases, the scars of their close relatives. This is a complement to its responsibilities in terms of protecting against risk, specifically preventing and controlling crime, and reintegrating offenders into society.

The Québec Ombudsman believes that the obsolescence of the legal framework needs to be addressed to correct inequities that have been created over time.

To this end, it recommended to the taskforce that:

- bodily injury and the loss of income be compensated separately;
- compensation for bodily injury be paid in a lump sum, irrespective of the victim's income;
- victims of crime who are unemployed at the time of the incident be compensated using the same principles governing the treatment of traffic accident victims who are unemployed at the time of the accident;
- the amount of compensation and eligibility criteria be the same for students who are victims of crime as for students who are compensated under the *Automobile Insurance Act*;
- it evaluate the possibility that funeral expenses covered by the government under different compensation plans be harmonized;
- the payment of death benefits correspond to the provisions of the *Automobile Insurance Act*;
- the list of infractions provided in the appendix to the law be updated;
- the appendix to the law may henceforth be amended by Ministerial Order or by regulation;
- victims who are unsatisfied with a decision rendered after a review have the opportunity to contest it before the Tribunal administratif du Québec;
- the period of limitation for presenting a claim for compensation be set at three years from the date of the offence, the appearance of the injury or the death;
- interest be paid when administrative rules are revised by the Bureau de révision administrative IVAC-Civisme of the Commission de la santé et de la sécurité du travail and varied or quashed by the Tribunal administratif du Québec.

Initially, the taskforce report on the review of the compensation plan was expected on March 31, 2007. It has been postponed to June 2007. The Québec Ombudsman wishes to ensure that this time, the review of the crime victims compensation plan delivers concrete, positive results for victims. The Québec Ombudsman will watch for any change in the rules of coverage or in direct services to victims.

COMPENSATION FOR THE WRONGFULLY CONVICTED

There is no disagreement about the tragedy of wrongful conviction and serving an unwarranted prison sentence. The resulting losses are significant: loss of the fundamental right of freedom, loss of private life and the enjoyment of life, damage to one's reputation, humiliation, loss of income, the prolonged effects of imprisonment, and the impact on close relatives.

The Québec Ombudsman has studied the cases of victims of wrongful conviction and imprisonment, and intends to issue recommendations to the Minister of Justice to address the situation.

Regardless of the limited number of known or anticipated cases of wrongful conviction, the degree of harm justifies this intervention, particularly given that there are so many secondary victims for each case.

REVIEW OF AMOUNTS AWARDED IN SUPPORT

The Québec Ombudsman believes that debtors and creditors of child support would benefit from the relaxation of rules regarding reviews of these payments. It intervened on this matter twice in 2004. The first time was before the Committee on Institutions for the study of Bill 21, *An Act to amend the Civil Code and the Code of Civil Procedure as regards the determination of child support payments*, and the second time was before the Comité de travail chargé de la révision de l'aide juridique. In December 2005, it took another look at this matter in a letter to the Minister of Justice.

Today, citizens still have to obtain a judgment from Superior Court to make the slightest change to established support payments. Even if their agreement is approved by a special registrar with the same enforceability of a Court decision, there are still costs involved: legal fees, service fees and lawyer's fees. Of course, many members of the public cannot afford these fees. Furthermore, certain situations—for example, when the parties agree on the amount of support payments—simply do not warrant a court application.

The Department has informed us that it is still studying this matter and hopes to complete its evaluation by fall 2007. The Québec Ombudsman will continue to monitor progress.

Recommendation

That the Civil Code and the Code of Civil Procedure be modified to relax the process for reviewing child support.

THE DIRECTEUR DE L'ÉTAT CIVIL

The Directeur de l'état civil is a public officer whose duties derive from the Civil Code of Québec. Its administrative organization within the Québec public service is the responsibility of the Ministère de la Justice.

The Directeur de l'état civil is the sole officer of civil status authorized to draw up acts of birth, marriage, civil union and death that occur in Québec or that concern persons domiciled in the province. It is the Directeur's responsibility to issue authentic documents related to these events, as well as copies and attestations, in a secure manner.

The Directeur keeps the register of civil status acts up to date with relevant judgments and changes originating here or elsewhere. It authorizes the consultation of the register.

As part of its duties, the Directeur processes changes of name and sex designation. It also keeps up to date a register of persons authorized to solemnize marriages and civil unions.

THE BALANCE BETWEEN SECURITY REQUIREMENTS AND QUALITY OF SERVICE

The Directeur de l'état civil issues documents that provide access to public services and that are required for obtaining driver's licenses, Canadian passports and other documents. As a result, it must pay constant attention to security upon registrations and in issuing copies and certificates of civil status. Since the beginning of 2006-2007, the Québec Ombudsman has noted that the Directeur has taken concrete measures to better reconcile security requirements with quality service.

Representatives of the Directeur de l'état civil and the Québec Ombudsman held many working sessions during the year. These sessions provided an opportunity for the Québec Ombudsman to note improvements in the time required to issue documents, phone access, counter service, publicity regarding attestations, the processing of complaints and the implementation of a new request processing system.

Complaints Reviewed by the Québec Ombudsman

Directeur de l'état civil	Complaints*	Complaint Grounds	Unsubstantiated Grounds	Substantiated Grounds
2006-2007	53	57	26	31

* Excluding complaints whose processing was interrupted or which were referred

TYPE OF COMPLAINTS

Our statistical analysis confirms the impact of improvements made by the Directeur de l'état civil in 2006-2007. The number of grounds for substantiated complaints dropped by 75% over the previous year. Of the 31 substantiated complaints this year, most were filed during the first three months of the financial year, and concerned access by phone and delays in issuing documents—problems that were solved during the summer of 2006. It should also be noted that no complaints were received related to the implementation of a new computer system last September.

THE DISSEMINATION OF INFORMATION ON THE SERVICES AVAILABLE

The Civil Code of Québec grants citizens the right to confirm the presence or absence of an act or mention made in the register of civil status. This attestation is different from a certificate of civil status, which can only be issued to people mentioned in them or who can prove a legitimate interest. In certain situations, it can be important to confirm information about another person entered in the register. An attestation can, for example, confirm that one's future spouse is not married, or that he or she is divorced.

And yet, many citizens are not aware that such attestations can be issued. The Québec Ombudsman has highlighted the importance of disseminating information about this service a number of times in its annual reports. In 2006, the Directeur de l'état civil added a section to its Web site informing the public of this service while providing at the same time a form to request an attestation.

NEW STATUS FOR THE COMPLAINTS OFFICER

Last year, the Québec Ombudsman noted the efforts of the Directeur de l'état civil to make its complaint service more visible. This year, the Directeur went one step further. It hired an officer responsible for processing complaints and granted the officer new status: the officer now reports to the Directeur. The officer's jurisdiction was also expanded, as suggested by the Québec Ombudsman.

The Québec Ombudsman has noted that the Directeur de l'état civil has improved its Web site, which now provides clearer information on filing a complaint.

CERTIFICATES OF CHANGE OF DESIGNATION OF SEX

In 2004, following a complaint, the Québec Ombudsman intervened in an effort to make a legislative amendment to bill 59, *An Act to amend the Civil Code as regards marriage*. It asked that a person born in Québec and domiciled outside of the province be able to obtain a certificate of change of designation of sex from the Directeur de l'état civil. The law in effect allows only people domiciled in Québec to obtain this certificate. The amendment was not added to Bill 59; the Directeur de l'état civil intends to soon ask for an amendment to the Civil Code of Québec to correct the situation. The Québec Ombudsman still believes the amendment is necessary.

OPENNESS TO CULTURAL COMMUNITIES

In its 2004-2005 annual report, the Québec Ombudsman suggested that consideration be given to amending article 51 of the Civil Code of Québec so that it reflects cultural specificities in registering the name of a newborn. This suggestion was not followed. After another complaint received in spring 2006, the Québec Ombudsman intervened once again.

A citizen wants to masculinize her son's surname

The Directeur de l'état civil did not allow a mother of Polish origin to masculinize her son's surname, which is a custom in her community of origin.

While the Directeur de l'état civil's position is in keeping with article 51 of the Civil Code of Québec, the investigation showed that it does not inform members of the public that another option is available. If the Directeur cannot, by virtue of the law, grant a request regarding the name of a newborn when his or her birth is registered, the parents may, for serious grounds, obtain a name change through administrative means for approximately \$350.

In effect, according to Superior Court, the grounds for "masculinizing the surname of her son, according to the traditions and customs of Québec's Polish community, are sufficiently serious grounds and are far from constituting a whim or fancy."¹ As a result, the Directeur de l'état civil should have advised the citizen of the option of asking for a name change for the child to masculinize a portion of his surname.

The Québec Ombudsman succeeded in having a name change accorded through administrative means. Furthermore, the Directeur de l'état civil has changed its practices. Now when a request is denied in accordance with article 51 of the Civil Code, the parents are told that they can ask for a name change.

The Directeur de l'état civil advised the Québec Ombudsman that it eventually plans to recommend amending the provisions of the Civil Code of Québec that govern the registration of births to take into account the customs of countries of origin. The Québec Ombudsman also believes that these amendments are required to adapt the management of civil status to the contemporary reality of Québec.

THE SERVICE STATEMENT

The Québec Ombudsman believes it is important for public agencies to make their commitments to the public known. The Directeur de l'état civil has not had a Service Statement since the Ministère des Relations avec les citoyens et de l'Immigration was abolished and integrated with the Ministère de la Justice in February 2005. However, the processing time for requests for certificates is announced on its Web site. The Directeur de l'état civil has indicated to the Québec Ombudsman that by the end of 2007 it will publish on its Web site a statement of commitments, which will be reiterated in whole or in part in the Service Statement of the Ministère de la Justice when it is updated.

1/ B.M. v Le Directeur de l'état civil (C.S. April 3, 2003) AZ – 03021696.

Recommendations

The Québec Ombudsman recommends:

That the Civil Code of Québec be amended so that a person born in Québec can ask the Directeur de l'état civil for a certificate of change of designation of sex even if he or she is no longer domiciled in Québec;

That it also be amended to take into account the traditions and customs of new immigrants and members of cultural communities with regards to patronymics upon registration of a birth in the register of civil status.