

## **Response from Canada to the Questionnaire relating to the Hague Convention of 5 October 1951 Abolishing the Requirement of Legalisation for Foreign Public Documents**

\* Canada is not a party to this Convention.

**1. In practice, what are the kinds of public documents (e.g., commercial documents, birth certificates) for which the competent authority(ies) in your state is (are) most commonly called upon to issue apostilles?**

DFAIT: The most common documents authenticated are birth certificates, marriage licences and adoption papers.

Manitoba: We verify signatures and seals of Notary Publics and attach a certificate of authentication signed by the authorized signing officer. Some examples of documents we attach our certificate to are Transcripts, Diplomas, Adoptions, Pension Forms, Power of Attorney, Certificate of Non-Marriage, Birth Certificates, Passport renewals and Invitations to Visit. Along with the examples I have mentioned we receive a large variety of documents that would be too numerous to list.

Ontario Official Documents Service: Large variety of certificates (birth, death, marriage, divorcee decrees) issued in foreign countries and notarized here, or by the Registrar General's offices in Toronto and Thunder Bay), conformity, adoption, school, university certificates, diplomas and transcripts), a lot of business related documents, affidavits, documents for custom clearance, partnership agreements, import, export, sale and distribution contracts, property ownership or transaction related documents etc Perhaps 10% of the documents are from within the provincial government and 90% from the public and companies. Most of our clients are from Asian countries, mainly from China but also from Hong-Kong, from India, from Eastern Europe, the United States and South America.

Quebec: In order to describe the current practice, a distinction must be made between authentic acts and other acts.

### *Authentic acts*

In Quebec law, the following acts are authentic:

- 1) copies of statutes which have been or are in force in Canada, certified by a competent public officer or published by an authorized publisher, are proof of the existence and content of such statutes, and neither the signature nor seal appended to such a copy nor the status of the officer or publisher need be proved (art. 2812 C.C.Q.).
- 2) if they are received or certified by a competent public officer according to the laws of Quebec or Canada, with the formalities required by law (art. 2814 C.C.Q.):
  - 1° official documents of the Parliament of Canada or the Parliament of Quebec;
  - 2° official documents issued by the Government of Canada or of Quebec, such as letters patent, orders and proclamations;
  - 3° records of the courts of justice having jurisdiction in Quebec;

- 4° records of and official documents issued by municipalities and other legal persons established in the public interest by an Act of Quebec;
  - 5° public records required by law to be kept by public officers;
  - 6° notarial acts;
  - 7° minutes of determination of boundaries.
- 3) Finally, a copy of the original of an authentic act, where the original is lost, a copy of an authentic copy of the act is authentic if it is certified by the public officer having custody of it (art. 2815 C.C.Q.).

These acts therefore serve as proof in respect of all persons in Quebec. There is no formal procedure that applies to them where they must be produced abroad. This depends on the applicable laws in the jurisdiction where they are to be produced.

#### *Other acts*

The *Courts of Justice Act*, R.S.Q., c. T-16,<sup>1</sup> provides that the Minister of Justice may appoint, by commission under his seal, as many persons as he deems necessary to administer oaths throughout Quebec or in any judicial district, which he shall indicate. The Minister of Justice keeps a register of the commissioners appointed. Commissioners appointed may administer oaths in any case where an oath is required or permitted by the laws of Quebec. Any affidavit taken by such a commissioner shall have the same force as if it had been taken in open court.

This Act also provides that advocates entered on the roll of the Ordre du Barreau are authorized to administer the same oath as a commissioner appointed by the Minister of Justice, throughout Quebec.

#### *The practice followed in Quebec*

Diplomatic and consular agents present in Quebec receive copies of facsimiles of signatures and specimens of seals containing the signatures and seals generally used in Quebec. These acts are therefore normally received by the different diplomatic and consular agents present in Quebec without further formality. There are, however, exceptions:

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<sup>1</sup> Cette loi prévoit également que sont autorisés à faire prêter le même serment qu'un commissaire nommé par le ministre de la Justice :

- a) le secrétaire général, les secrétaires généraux adjoints et les secrétaires adjoints de l'Assemblée nationale, sur tout le territoire du Québec;
- b) le greffier d'une cour de justice et son adjoint, sur le territoire du district judiciaire où ils sont nommés;
- c) le maire, les conseillers, le greffier ou secrétaire-trésorier d'une municipalité, sur le territoire de cette municipalité qui comprend, aux fins du présent article, le bureau de la municipalité situé conformément à la loi à l'extérieur de ce territoire;
- d) le curé ou ministre du culte autorisé à célébrer les mariages dans un territoire non organisé, sur ce territoire;
- e) les avocats inscrits au tableau de l'Ordre du Barreau, sur tout le territoire du Québec;
- f) les notaires inscrits au tableau de l'Ordre des notaires du Québec, sur tout le territoire du Québec et en dehors du Québec lorsque la prestation du serment se rapporte à un acte juridique qui présente un élément de rattachement au Québec;
- g) les juges de paix, sur tout le territoire du Québec.
- h) Toute personne détenant un brevet d'officier dans les forces armées du Canada et ayant le rang de major ou un rang équivalent ou supérieur est autorisée à faire prêter, par toute personne enrôlée dans les forces armées du Canada, le même serment.

- In the case of notarial acts, the authenticity of the signature and the capacity of the person signing the document as a notary are certified by the Chambre des notaires du Quebec.
- Where the person authorized to administer the oath is a lawyer, the authenticity of the signature and the capacity of the lawyer are certified by the Barreau du Quebec.
- Where the person authorized to administer the oath is a commissioner for oaths, the authenticity of the signature and the capacity of commissioner are certified by the Ministère de la Justice of Quebec.

Sometimes, however, at the request of certain diplomatic or consular agents generally, the Protocole du gouvernement du Quebec informs them of the persons authorized to certify the authenticity of the signature and the capacity of the persons signing the document(s) for different authentic acts or private writings.

Moreover, sometimes the authenticity of the signature and the capacity of the person signing the document:

- in the case of the registrar of civil status, is certified by the deputy minister of the Ministère des Relations avec les citoyens et de l'Immigration, which is responsible for civil status;
- in the case of the person designated by the Barreau du Quebec, is certified by the Minister of Justice.

These different situations rarely arise (on average less than once a year).

Moreover, sometimes, despite the procedures set down in the Protocole du gouvernement du Quebec, at the request of certain diplomatic or consular agents, the authenticity of the signature and the capacity of the person signing the document are certified by the Department of Foreign Affairs and International Trade (Canada).

The following table shows the different acts and the different authorities that sign them.

ACTS	AUTHORITIES
acts of civil status (acts of birth, marriage, civil union and death)	Quebec's registrar of civil status
judgment	the various clerks of the courts that render the judgments
laws	Quebec's National Assembly
orders	the clerk of Quebec's Conseil exécutif
different documents relating to the incorporation of certain businesses	Quebec's Inspector General of Financial Institutions
Certain academic records and attestations of studies	Quebec's Minister of Education
Notarial acts and private writings that form part of a notary's records	notaries the authenticity of whose signatures and whose capacity as the persons signing documents are certified by the Chambre des notaires du Quebec
Other acts [generally authorizations to travel for children; <i>certificats de coutume</i> (affidavits of law) and	Different persons signing documents to whom an oath can be administered by commissioners for oaths or a lawyer and

singlehood certificates; sworn statements; powers of attorney, academic records and attestations of studies issued by schools, colleges or universities, etc. ]	the authenticity of whose signatures and whose capacity as persons signing documents are certified by the Minister of Justice or by the Barreau du Quebec in the case of a lawyer
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**2. Do you have statistics at your disposal with respect to the number of apostilles issued by your competent authorities (by type of document, if possible)?**

DFAIT: Canada authenticates approximately 50,000 documents a year.

Manitoba: We issue approximately 100 authentication certificates a month.

Ontario Official Documents Service: Based on the 2 previous fiscal years ODS processes over 18,000 such documents are authenticated by Official Documents Services per year including documents from and to Commonwealth countries which are now signed by the Chair of Management Board (instead of by the Lieutenant General of Ontario after a change of signing authority and subsequent amendments to the Notary Public AND Commissioner for taking affidavits Acts 2 years ago). The Manager of Official Documents Services on behalf of the Chair of Management Board now signs all such documents. By “documents from Commonwealth countries” we mean copies that are notarized by Ontario notaries.

They go to all countries but mainly to/from China, Hong-Kong, India, USA etc For international validation all documents are supposed to pass through ODS for authentication according to the expectations of foreign countries, authorities, Consulates, Embassies and Commissions. However, a lot of important Consulates have their own rosters of Lawyers, Notaries for whom they don't require the ODS certificates of authentication. For some other Consulates, ODS is a mandatory stop.

Quebec It is impossible to distinguish, among the number of acts of civil status, judgments, laws, orders, documents incorporating certain businesses, academic records and attestations of studies, those that are going abroad and those that are issued for use in Quebec.

For notarial acts, acts signed by a lawyer or by a commissioner for oaths, there are the following statistics:

ACTS	AUTHORITIES	NUMBRE OF ACTS
Notarial acts	Chambre des notaires du Quebec	5000 per year (the types of acts vary widely: private writings filed with a notary and notarial acts per se)
Acts signed by a lawyer	Barreau du Quebec	200-300 per year
Acts signed by a commissioner for oaths	Minister of Justice	One hundred per year consisting principally of powers of attorney under

		private writing
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**3. Pursuant to the application by the EC for membership of the Hague Conference, it will need to be determined to what extent the Hague Conventions, and in particular the “Apostille” Convention, should or could be extended to regional economic-integration organizations. Do you consider that it would be necessary or appropriate to adopt a protocol favouring the adoption of a clause similar to that of Art.18 of the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary?**

No comment.

**4. Would you be in favour of the adoption of a protocol designed to enable a State with several units to extend the application of the Convention to one or several of its territorial units?**

Yes. A federal clause would facilitate Canada’s becoming a party to the Hague Convention of October 5, 1961, Abolishing the Requirement of Legislation for Foreign Public Documents, because then the consent of all the provinces/territories would not be required.

**5. Can you specify the price charged by the competent authorities in your country for the issuance of the apostille?**

DFAIT: There is no charge for authenticating a document.

Manitoba: We charge \$12.00 for each certificate of authentication. The same charge would apply to an apostille.

Ontario Official Documents Service: \$ 16.00 for notarized and \$ 32 for Commissioned and Government Officials (such as various certificates and documents issued by the Registrar General).

Quebec: There is a fee for each act of civil status, judgment, law, order, document relating to the incorporation of certain businesses, academic record and attestation of studies. This fee varies generally depending on the number of pages in the document. However, because this fee was not set to take into account the fact that these various documents may be sent abroad, we will not discuss here the fees for sending them abroad.

ACTS	AUTHORITIES	
Notarial acts	Chambre des notaires du Quebec	\$28.76 each; if there are more than 4 documents; \$11.50 plus taxes is charged for each additional document
Statements sworn before	Barreau du Quebec	\$28.76 each; if there is

a lawyer		more than one document, \$5 plus taxes is charged for each additional document.
Statements sworn before a commissioner for oaths	Minister of Justice	No charge.

**6. In practice, have you encountered difficulties connected with the formal requirements provided for under the Convention?**

Canada is not a party to the Convention.

**7. Practical information relating to the methods used to affix the apostille would be very useful. In particular, how do you proceed when the public document to receive the apostille has several pages?**

DFAIT: Canada does not use the apostille. In authenticating a document we put a stamp on the document and then sign it. The issue of whether we stamp only on one page of the document or on all pages depends on the requirement of the country where the document is to be used. Some countries want each page signed or initialled and authenticated and others want only the one page with the signature authenticated.

Manitoba: We use steel rivets, we call eyelets, punched directly through our certificate together with the documents that we have authenticated. This method does not allow anyone to take the documents apart and ensures the Consulates and Embassies receiving our documents that they have not been tampered with.

Ontario Official Documents Service: The authentication process is the same, no matter the size of the document. Thick documents need to be drilled and attached with a ribbon to the certificates of authentication. If the documents are too thick we ask clients to have them drilled prior to their visit to ODS. When dealing with a very thick document, the Certificate of Authentication is attached to the page where the NP's or Commissioner's seal, stamp and signature appears.

Quebec: The certification takes the form of a separate document, which is attached to the document whose signature must be certified. The number of pages in the document does not therefore matter. Occasionally the authenticity of the signature and the capacity of the person who signs the document are certified for each page of the document on which the signature appears.

The certification may be done on paper of high quality, normally legal sized, with seal and ribbons (for the Chambre des notaires and the Ministère de la Justice).

**8. Is consultation of the register or card index for verification requested frequently?**

DFAIT: The books of signatures are consulted regularly to check on the signature. These have the signatures of notaries, university presidents, registrars etc.

Manitoba: The authentication certificate we use requires us to compare the signature and seal on our index card with the signature and seal on each document. This is required to be done each time a certificate is issued.

Quebec: At present, registers are kept, but for internal use only. They are not consulted by the public.

**9. Do you use signatures by mechanical means, stamp, and/or electronics, to fill in apostilles? If so, have security measures been taken to avoid any fraud? If so, which?**

DFAIT: Canada does not use mechanical means to authenticate documents.

Manitoba: We use only original signatures on our certificates.

Ontario Official Documents Service: The Manager's scanned signature is used, electronically reproduced on each certificate of authentication (and other documents such as various Certificates of Appointments) issued by ODS.

Quebec: The signature is generally handwritten. In a few rare cases it is mechanical. It is never electronic.

**10. Do you use an electronic medium to keep the "register or card index" provided for under Article 7 of the Convention? If so, do you also keep a paper copy of the entries and if not, do you contemplate doing so? What are your reasons?**

Canada is not a party to the Convention.

**11. Do you issue apostilles for electronic documents? If so, can you provide us with details of the manner of that issuance and if not, do you think this possibility can be contemplated?**

DFAIT: Canada does not authenticate electronic documents.

Manitoba: We do not accept electronic documents for our authentication process.

Ontario Official Documents Service: The proper technology doesn't exist or would have very high costs attached. A special camera would be used for scanning each seal. Notary and Commissioner seals are 3 dimensional.

Quebec: Thus far, electronic documents have never been submitted for certification of the signature and the capacity of the person who signed them.

This scenario seems to us at first glance to be unlikely because such a procedure presupposes keeping track of the technologies of the various players in the process. Keeping track of these technologies seems especially difficult because there are many players spread

throughout the world. Moreover, some of these players are private law natural persons or corporations for whom it may be exorbitant to invest such sums for the sporadic use they could make of it. Finally the high degree of formalism required by diplomatic and consular agents present in Quebec, or by the legislation of their States, seems hard to reconcile with the use of electronic formats.