

Quebec wedding ruling called 'blatantly wrong'

By Luis Millan

The Lawyers Weekly

Vol. 35, No. 40

(March 4, 2016)

2016

A controversial Quebec Superior Court decision which ruled that religious weddings do not necessarily carry any legal obligations under civil law may have alarming and sweeping consequences, according to family law experts.

The ruling in *Droit de la famille* [2016] 16244 QCCS 410 creates a new category of civil status in Quebec, undermines long held views of religious marriages and will possibly expose women to vulnerable situations where they will be pressured into a religious marriage without the protection afforded by civil law, cautioned family lawyers.

"This ruling is very disturbing," remarked Alain Roy, a family law professor at the University of Montréal and head of a government-mandated committee that last year issued a 600-page report with 82 recommendations calling for sweeping reforms to Quebec's family law regime. "It risks opening a Pandora's box. If this ruling stands I wouldn't be surprised if 10 years from now there will be a lot of unpleasant surprises, with some women finding out that they are not married under civil law."

In a ruling that has baffled family lawyers, Justice Christiane Alary held that a minister of religion who performs a religious marriage does not have to send a declaration of marriage to the registrar of civil status of Québec. Couples who pursue this avenue would not be recognized as being legally married under civil law and would therefore not benefit from the legal protections granted to married couples, warned family lawyers.

Family lawyers are just as perplexed by the stance taken by Quebec Attorney General Stéphanie Vallée, who successfully argued that a religious celebrant can perform a religious marriage that does not necessarily lead to "civil effects." (A spokesperson for the attorney general declined to comment).

"The judgment is blatantly wrong in law," stated Montreal family lawyer Anne-France Goldwater of Goldwater, Dubé. "And shame on the attorney general of Quebec for arguing that. If you read the

sequence of articles from 365 to 375 of the Civil Code, a celebrant has no choice. Once he has performed the marriage he draws up a declaration of marriage and sends it without delay to the registrar of civil status."

In Quebec, a declaration of marriage or civil union is mandatory under the Civil Code, and it must be filed before the registrar of civil status, otherwise the marriage will not be recognized, points out Roy. Article 118 of the Civil Code stipulates that the declaration of marriage has to be made without delay to the registrar by the person who solemnized the marriage while article 366, among other things, authorizes ministers of religion to solemnize marriages. According to Roy, a minister of religion then is not only a "religious officer" who must solemnize a marriage that conforms to his faith's rites but also a "civil official" who has no choice but to forward "without delay" the declaration of marriage to the registrar.

"I admit that I do not understand her understanding of the Civil Code," said Roy. "Would it be acceptable for a notary who celebrates a marriage to not send the declaration of marriage to the registrar? Of course not. From the moment that a religious officer is conferred with a civil status to solemnize a marriage, he has no discretion but to send the declaration of marriage to the registrar."

According to Michel Tétrault, a lawyer and author of several books on Quebec family law, a religious marriage celebrated with a minister of religion who does not transmit the declaration of marriage to the registrar is not legally recognized as a marriage under Quebec law. "Marriage is an institution that the courts take very seriously and they strive to ensure that the rights and duties of spouses are fulfilled and respected," said Tétrault. "A marriage therefore must necessarily involve commitments compatible with public policy. It must lead to the creation of a matrimonial regime, whatever form it may take. When a religious union is celebrated but the registrar does not receive a declaration of marriage, it has no civil effect."

The case involves two accountants who married in a Catholic church. After 11 years of marriage, the man, a Baptist, asked for a divorce and then an annulment of their union. He argued that articles 118 and 366 of the Civil Code were unconstitutional and breached both the Canadian Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms. He maintained that people who are not religious have a choice to live together, and are therefore able to establish between themselves financial and patrimonial agreements that suit their needs. He further argued that people of faith do not have that option because as soon as they are married religiously there are obligatory rules that dictate the sharing of matrimonial property.

His challenge was rejected, albeit erroneously, according to Université of Montréal constitutional law professor Stéphane Beaulac. But more importantly, Beaulac believes that the decision opens the door to uninformed consent. In Quebec, future spouses must be able to give free and enlightened consent before marrying. "The big concern is that it will open the door to situations where there will be uninformed consent and situations where a spouse -- usually women -- will face undue pressure to marry religiously without receiving the protection afforded by the civil law," said Beaulac, who

believes that the decision creates a new category of civil status in Quebec, a religious marriage without civil consequences.

The decision leaves many unanswered questions around informed consent and the legal duties of ministers of religion, added Roy. Religious institutions such as the Catholic Church have always worked under the premise that a minister of religion who performs a religious wedding was legally obligated to send a declaration of marriage to the registrar. But while that no longer appears to be the case, the judgment does not stipulate whether ministers of religion are legally compelled to inform couples of the new option available to them. Nor does it provide clues on how ministers of religion will ensure that the spouses have given their free and enlightened consent under this new scenario. "How will it work?" Roy asks, adding: "Will the minister of religion who performs a religious wedding automatically send a declaration of marriage to the registrar? Or will he send it only at the request of the spouses? If he does not send a declaration of marriage at the request of the parties, how will he ensure the validity of their consent? The infrastructure is not in place following this decision to ensure the integrity of consent."

Roy believes that the ruling provides the Quebec government with an ideal opportunity to implement one of the recommendations made by the government-mandated committee that proposed changes to Quebec's family law regime. Besides repealing the concept of civil union, the committee recommends that couples without children be left to define the contractual arrangement they would like to live under, whether in a common-law relationship or a regular marriage. But couples who choose to opt out of the legal consequences under civil law of their marriage would have to formalize their agreement by a notary, added Roy.