

GENERAL INFORMATION AND STATISTICS

I. Questions for non-Contracting States

1) Please indicate why your State is not a Contracting State to the Apostille Convention (select as many answers as are relevant):

The domestic law of your State does not require that foreign public documents be legalised or otherwise authenticated before having effect in your State – if you select this answer, please also respond to the following question:

Even when the domestic law of your State does not require that foreign public documents be legalised or otherwise authenticated before they are produced in your State, do you agree that the Apostille Convention would nonetheless be helpful for citizens and companies of your State that need to *produce abroad* public documents that were *executed in your State*?

YES – please explain whether or not this could be a persuasive argument for your State to join the Convention:

NO – please explain:

- There are legal obstacles in your domestic legal system that prevent your State from becoming a party to the Convention – if so, please specify what these obstacles are:
 - Your State considers that there are specific issues arising out of the Apostille Convention which dissuade your State from joining the Apostille Convention – please specify what these issues are and / or provide examples:
 - Your State does not have the means or resources to properly implement the Apostille Convention
 - The question of becoming a Party to the Convention has never been examined in detail
 - The absence of a clause that would allow for the Apostille Convention to be extended to one or more territorial units prevents your State, as a multi-unit State, from joining the Convention
 - Other reason – please explain:
- 2) Please forward a list of any bilateral or regional agreements, treaties or instruments to which your State is a party and that provide rules for abolishing or facilitating the legalisation of foreign public documents:
- N/A*
- 3) Is your State currently studying the Apostille Convention or does your State envisage studying it with a view to becoming a State Party in the near future?
- YES – please specify (status of considerations in your State, etc.):
Canadian provinces and territories are at present considering the desirability of implementing the Convention.
 - NO

GENERAL INFORMATION ABOUT THE CANADIAN SYSTEM OF AUTHENTICATION OF DOCUMENTS (FEDERAL LEVEL AND IN SPECIFIC PROVINCES)

1. Documents most often legalised

Department of Foreign Affairs and International Trade of Canada (DFAIT): The most common documents authenticated are birth certificates, marriage licences and adoption papers.

Manitoba: Signatures and seals of Notary Publics are verified and a certificate of authentication is signed by the authorized signing officer. Some examples of documents that are attached to the certificate are Transcripts, Diplomas, Adoptions, Pension Forms, Power of Attorney, Certificate of Non-Marriage, Birth Certificates, Passport renewals and Invitations to Visit.

Ontario Official Documents Service (OODS): 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.

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-16,¹ 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.

¹ 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.

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:

- 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 singlehood certificates; sworn	Different persons signing documents to whom an oath can be administered by commissioners for oaths or a lawyer and the authenticity of whose

statements; powers of attorney, academic records and attestations of studies issued by schools, colleges or universities, etc.]	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. Statistics

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

Manitoba: Approximately 100 authentication certificates are issued per month.

Ontario Official Documents Service: the Ontario Official Documents Service 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. "Documents from Commonwealth countries" mean copies that are notarized by Ontario notaries.

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

3. Price for legalising documents

DFAIT: There is no charge for authenticating a document.

Manitoba: There is a charge of \$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 a lawyer	Barreau du Quebec	\$28.76 each; if there is 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.

4. Methods of legalisation

DFAIT: In authenticating a document, a stamp is put on the document and signed.

Manitoba: Use of steel rivets, called eyelets, that are punched directly through the certificate together with the documents that are authenticated. This method does not allow anyone to take the documents apart and ensures the Consulates and Embassies receiving the 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, clients are asked 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).

5. Consultation of the register or card index for verification

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.

6. Signatures on certificates

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

Manitoba: Only original signatures are used on the 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.

7. Legalisation of electronic documents

DFAIT: Canada does not authenticate electronic documents.

Manitoba: Electronic documents are not accepted for the 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.