

## **I just found out that I am not my child's father**

Mario and Joanie (fictional names) have been living together for several years and have a child together. The act of birth of the child, whose name is Vincent, indicates Mario and Joanie as his parents. The couple separates when Vincent is seven years old. Despite the separation, Mario continues to take care of Vincent and provides for him.

Some time after the separation, Mario bumps into someone who, through his statements, raises a doubt in Mario's mind regarding his paternity with respect to Vincent. Mario decides to dispel all doubts and, while Vincent is staying with him, Mario takes the opportunity to have a DNA test for him and Vincent. The test confirms, with a probability of 99.9%, that, unfortunately, Mario is not Vincent's father. From that point on, Mario decides to sever all ties with the child.<sup>1</sup>

Mario also decides to initiate court proceedings to contest his paternity. The judge refuses his application, based on the reasons set out in the second paragraph of article 530 of the Civil Code of Québec which states: "No one may contest the status of a person whose possession of status is consistent with his act of birth." Once these two conditions have been met, it is impossible to contest filiation.

Mario's situation satisfies these two conditions: His name appears on the child's act of birth and he has behaved like a father towards the child since the child's birth, thereby acquiring a "possession of status" consistent with Vincent's act of birth. Consequently it is impossible for Mario to contest his paternity, even if he is not Vincent's biological father. Mario will therefore continue to be Vincent's legal father, with all the effects this status entails.

The declaration of paternity made when a child is born is an important and serious act which gives rise to legal obligations. Indeed, under article 523 of the Civil Code of Québec: "Paternal filiation and maternal filiation are proved by the act of birth, regardless of the circumstances of the child's birth." In certain very specific situations, a father can contest the paternity established in a child's act of birth. The decision will focus primarily on possession of status, which depends on three criteria: the child's family name (this is not a decisive criterion), the fact that the father has acted as the real parent and the fact that the child's circle of family and friends considers the father to be the child's parent.

You should therefore be highly aware of the impact of having your name inserted on a child's act of birth.

Text prepared by  
M<sup>e</sup> Mireille Bonneau  
Lawyer at  
the Jonquière legal aid office

### **Contact Us**

Commission des  
services juridiques  
Communications Department  
2 Complexe Desjardins  
East Tower  
Suite 1404  
P.O. Box 123  
Succursale Desjardins  
Montreal, Québec  
H5B 1B3

Telephone: (514) 873-3562  
Fax: (514) 864-2351

**[www.csj.qc.ca](http://www.csj.qc.ca)**

\* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.

<sup>1</sup> Note that a test obtained in this manner is not accepted as evidence in court.