



DEPRIVATION OF PARENTAL AUTHORITY AND ADOPTION

The *Civil Code of Québec* confirms that fathers and mothers have the rights and duties of custody, supervision and education of their children; this is a core natural principle.

This parental authority allows parents to look after their children by exercising these rights and duties, while also providing for their needs. However, where warranted by serious reasons in the child's interest, a court may withdraw one or more of these rights and duties from a parent—this is referred to as deprivation of parental authority. Any interested party may request deprivation of parental authority.

Once deprivation of parental authority has been pronounced against a parent, can a grandparent from the same bloodline ask to see his grandchild? The answer is “Yes,” if it is in the child's interest. However, if the child is adopted, the bond with the original family is broken. Members of this family have no more rights with respect to the child than does a third party. If they want a right of access, they must ask a court to grant them that right.

In 2005, the Honourable Judge André Prévost was required to rule on such an application.¹ In his judgment, the judge refused to grant rights of access to the grandmother, because it would not have been in the child's interest to do so. It was the adoptive grandparents who now enjoyed these rights.

The state of the law regarding adoption can therefore be summarized as follows:

- (a) Adoption in Québec is a closed system: That is, it breaks all bonds of filiation with the original family;
- (b) When granting a right of access, the biological family is considered to be a third party;
- (c) A right of access will be granted only if it is in the interest of the child to do so.²

As lawyers, we must assess each case in light of the principles set out above. We must therefore exercise care to ensure that all decisions are made in the interest of the child.

References:

- ¹ *M.M. v. S.B.T.*, Drummond Sup. Ct. 405-04-002726-043, 15 November 2005 (www.jugements.qc.ca).
- ² *J.M.J. v. S.V.*, Drummond Sup. Ct. 405-04-001317-992, 15 January 2002, para. 69, 72, 73 and 74 (www.jugements.qc.ca)

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