

Info sheet no. 9

Bill 10's impact on institutional property ownership

A lexicon of terms used is presented at the end of this sheet.

The institutions merged under Bill 10 into a Centre Intégré (CI) were merged by amalgamation or by grouping. Under merger by amalgamation the merged institution loses its legal identity and therefore no longer exists as an institution. The new CI assumes all of the responsibilities, liabilities and assets of the merged institution, including human resources and property. Under merger by grouping, the institution keeps its legal identity and therefore continues to exist. The new CI assumes all of the responsibilities, liabilities and assets of the grouped institution, including human resources but not property. The grouped institution keeps the ownership of its property.

Where a CI administers a grouped institution, that grouped institution has 'members'. There is a long history to this particular legal feature. In brief it is the manner that has evolved under the Health and Social Service Act (S 4.2) of recognizing that the public network uses property and buildings that do not belong to the government. At one time this dimension of an institution's identity was referred to as an Owning Corporation which gave the misleading impression that there were two legal entities, not one. Today it is referred to as the legal person (personne morale). The members of a public institution constitute this legal person and are the people who exercise the ownership. As a result of past practices, the MSSS has a register of every institution that has 'members', and who they are.

When an institution is merged by amalgamation, if it had members, they must consent to the amalgamation, and in so doing they accept that their legal status and rights are extinguished. Under Bill 10 as originally proposed, all public institutions would have been amalgamated into a CI and their members would have disappeared from a legal point of view. After negotiation a different way of proceeding was found. The institutions with members were not amalgamated but grouped under the CI. This enabled all of their program responsibilities and assets, except property, to be transferred by Bill 10 to the CI. The fact these institutions were grouped means they still exist legally, as do their members. In many institutions the members formed a Board of Governors to exercise their rights and privileges.

Under S 4.2 the members of the grouped institution had four powers:

- Over a change in the legal status of their grouped institution;
- Over sale of the property belonging to their institution;
- Over the use of the proceeds from the sale of any of their institution's property;
- Over their own governance.

These powers are recognized again in Bill 10 in the first paragraph of section 28:

28. *Le conseil d'administration d'un centre intégré de santé et de services sociaux ou d'un établissement non-fusionné administre les affaires d'un tel établissement et, le cas échéant, celles d'un établissement regroupé et en exerce tous les pouvoirs, à l'exception de ceux attribués aux membres d'une personne morale visée à l'article 139 de la Loi sur les services de santé et les services sociaux pour l'application des articles 180 (regarding alienation or change of use of the immovable), 181.1 (regarding internal governance of the personne morale), 262.1 (proceeds from surplus immovables), 322.1 (supplementary letters patent for an institution), et 327 (amalgamation or conversion) de cette loi.*

(Words in parentheses are not in the text of the law. They are added here for clarity.)

Bill 10 accorded two more powers to the members:

- Over any decision related to access to services of a cultural or linguistic nature given in the facilities of the grouped institution. This is expressed in the second paragraph of section 28 of Bill 10:

***28.** De plus, le conseil d'administration d'un centre intégré doit obtenir l'accord d'au moins les deux tiers des voix exprimées par les membres d'un établissement regroupé qu'il administre pour toute décision relative à l'accès aux services de nature culturelle ou linguistique rendus dans les installations de cet établissement.*

- Over any request to be made by the CI to the Office Québécoise de la langue française (OQLF) that the recognized status of the grouped institution under article 29.1 of la Charte de la langue française be withdrawn. This is expressed in section 208 of Bill 10. More about this below.
 - ***208.** Un centre intégré de santé et de services sociaux issu d'une fusion faite en vertu de la présente loi qui demande le retrait d'une reconnaissance en application de troisième alinéa de l'article 29.1 de la Charte de la langue française doit, pour que sa demande soit recevable, l'accompagner d'une recommandation favorable d'au moins les deux tiers des membres du Comité régional pour les programmes d'accès à des services de santé et de services sociaux en langue anglaise institué conformément à l'article 510 de la Loi sur les services de santé et des services sociaux pour la région, ainsi que d'une recommandation favorable du Comité provincial pour la prestation des services de santé et des services sociaux en langue anglaise formé en application de l'article 509 de cette loi.*
 - *La demande de retrait de la reconnaissance d'un établissement regroupé doit en outre être accompagnée d'une recommandation*

favorable d'au moins les deux tiers des voix exprimées par les membres de cet établissement.

The powers of veto are exercised by a 2/3 majority of the members.

In summary, the property of an amalgamated institution became the property of the CIs it was merged into. But the property of the grouped institution continues to belong to that institution which continues to exist legally and the members of that institution exercise the property rights and other vetos.

This feature of Bill 10 is of importance to the minority communities (English-speaking, Jewish, Italian and Chinese) who raised the funds to purchase land and construct buildings where publicly funded services now operate. During the debate about Bill 10 these communities argued that transfer of these properties to CIs would amount to expropriation without consent or compensation. The mechanism of the grouped institution was the solution to giving CIs full management control of services, without affecting the historic property rights.

LEXICON

Terms in bold are those used in the Information Sheet series.

Terms following the = sign are the equivalent terms found in the English version of the laws referred to, where an English term exists.

Bill 10 = O 7.2 = the Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies

Charter = la Charte de la langue française

CI (Centre Intégré) = integrated health and social services centre

OQLF = Office Québécoise de la langue française

Provincial Advisory Committee = Provincial Committee on the dispensing of health and social services in the English language

Regional Access Committee = Regional Committee

Resident = In-patient

S 4.2 = the Act Respecting Health Services and Social Services

Specialized hospital = unamalgamated institution