



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FIFTH LEGISLATURE

Bill 80

Court Bailiffs Act

Introduction

Introduced by
Mr Paul Bégin
Minister of Justice and
Minister responsible for the administration of
legislation respecting the professions



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EXPLANATORY NOTES

This bill establishes a professional order of court bailiffs under the name of “Ordre professionnel des huissiers de justice du Québec”.

The bill confers on the members of the Order, subject to certain exceptions, the exclusive right to practise the profession of court bailiff, which is defined as the performance of any act the object of which is to serve written proceedings issuing out of any court, to execute judicial decisions that are executory and to perform any other duty assigned to a court bailiff by law or by a court.

The bill also provides that the Order and its members will henceforth be subject to the provisions of the Professional Code and that the Bureau of the Order will be formed in the manner prescribed by the Professional Code.

Measures are included to provide for the induction into the new professional order of the persons who, on the date of coming into force of the Act, hold a bailiff's permit issued by the Minister of Justice.

Finally, the bill contains a number of provisions to ensure that the new professional order will be operational upon the coming into force of its constituting Act.

LEGISLATION AMENDED BY THIS BILL:

- Code of Civil Procedure (R.S.Q., chapter C-25);
- Professional Code (R.S.Q., chapter C-26);
- Act respecting municipal courts (R.S.Q., chapter C-72.01).

LEGISLATION REPLACED BY THIS BILL:

- Bailiffs Act (R.S.Q., chapter H-4).

Bill 80

Court Bailiffs Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION

1. In this Act and in any Act or regulation, unless the context indicates a different meaning, the term “bailiff” means “court bailiff”.

DIVISION II

ORDRE PROFESSIONNEL DES HUISSIERS DE JUSTICE DU QUÉBEC

2. All the persons qualified to practise the profession of bailiff in Québec constitute a professional order called “Ordre professionnel des huissiers de justice du Québec” or “Chambre des huissiers de justice du Québec”.

3. Subject to this Act, the Order and its members shall be governed by the Professional Code (R.S.Q, chapter C-26).

4. The head office of the Order shall be within the territory of the Communauté urbaine de Montréal or at such other location in Québec as may be determined by regulation of the Bureau under paragraph *f* of section 93 of the Professional Code.

5. Every proceeding directed against the Order must be served upon its secretary at the head office of the Order.

DIVISION III

BUREAU

6. The Order shall be governed by a Bureau constituted as prescribed in the Professional Code.

7. In addition to the powers conferred by section 94 of the Professional Code, the Bureau, by regulation, may establish and administer a research and development fund made up of sums paid into it by the Order, gifts and legacies made for such purpose and the proceeds of the general accounts held in trust by bailiffs in the practice of their profession, in order to promote professional training, continuing education and research and information related to the practice of the profession of bailiff.

8. Section 95.1 of the Professional Code applies to a regulation made under section 7.

DIVISION IV

PRACTICE OF THE PROFESSION

9. The practice of the profession of bailiff consists of any act the object of which is to serve written proceedings issuing out of any court, to execute judicial decisions that are executory and to perform any other duty assigned to a bailiff by law or by a court.

10. A bailiff may make purely material ascertainment, excluding any opinion on the factual or legal consequences that may result therefrom; such ascertainment have merely informative value.

11. No bailiff may practise his profession under a name other than his own.

Nevertheless, bailiffs are allowed to practise their profession under a firm name which may be the name of one, several or all of the partners. The firm name may also continue to include, for a period not exceeding three years, the name of a partner who has ceased to practise his profession provided the firm name included his name for at least one year before he ceased to practise.

12. No bailiff may, in the practice of his profession, refer to himself otherwise than as a court bailiff or bailiff.

13. A bailiff must perform his duties without partiality. The giving of information to any person who is a party to legal proceedings does not constitute an act of partiality.

14. A bailiff shall not charge, for acts described in section 9, fees or costs other than those fixed in the tariff established by regulation of the Government.

DIVISION V

ILLEGAL PRACTICE OF THE PROFESSION

15. Subject to the rights and privileges granted by law or by regulation to other persons, particularly where it is provided that a proceeding may be served or a decision executed by another person or by way of another mode of service or execution, no person may perform any of the acts described in section 9 unless he is a bailiff.

The first paragraph does not apply to acts performed by a person in accordance with the provisions of a regulation made under paragraph *h* of section 94 of the Professional Code.

16. No person may act as the bailiff of a municipal court unless he is a member of the Order.

17. Every person who contravenes a provision of section 15 or 16 is liable, for each offence, to the penalties prescribed in section 188 of the Professional Code.

DIVISION VI

AMENDING PROVISIONS

CODE OF CIVIL PROCEDURE

18. Article 15 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by striking out the words “, except in the case of a bailiff, who may be suspended only by the Minister of Justice in accordance with the formalities provided in the Bailiffs Act (chapter H-4)” in the second, third and fourth lines of the second paragraph.

19. Article 120 of the said Code is amended by replacing the second paragraph by the following paragraph:

“The taxable costs of service are the costs chargeable by a bailiff pursuant to the regulation made under section 14 of the Court Bailiffs Act (*insert here the year and chapter number of Bill 80 of 1995*).”

20. Article 554 of the said Code is amended by replacing the third paragraph by the following paragraph:

“The taxable costs of execution are the costs chargeable by a bailiff pursuant to the regulation made under section 14 of the Court Bailiffs Act (*insert here the year and chapter number of Bill 80 of 1995*).”

PROFESSIONAL CODE

21. Section 31 of the Professional Code (R.S.Q., chapter C-26), amended by section 16 of chapter 37 of the statutes of 1994 and by section 27 of chapter 40 of the statutes of 1994, is again amended by replacing the figure “21.1” in the third line by the figure “21.2”.

22. Section 32 of the said Code, amended by section 17 of chapter 37 of the statutes of 1994 and by section 28 of chapter 40 of the statutes of 1994, is again amended by replacing the words “or acupuncturist” in the fifth line by the words “, acupuncturist or bailiff”.

23. Schedule I to the said Code, amended by section 18 of chapter 37 of the statutes of 1994 and by section 181 of chapter 40 of the statutes of 1994, is again amended by inserting, after paragraph 21.1, the following paragraph:

“21.2 The Ordre professionnel des huissiers de justice du Québec;”.

ACT RESPECTING MUNICIPAL COURTS

24. Section 68 of the Act respecting municipal courts (R.S.Q., chapter C-72.01) is amended by replacing the words “holders of permits issued under the Bailiffs Act (chapter H-4)” in the third and fourth lines of the first paragraph by the words “members of the Ordre professionnel des huissiers de justice du Québec”.

DIVISION VII

TRANSITIONAL AND FINAL PROVISIONS

25. Every person who, on (*insert here the date of coming into force of this section*), is the holder of a bailiff's permit issued by the Minister of Justice under section 5 or 6 of the Bailiffs Act (R.S.Q., chapter H-4) shall be entered on the roll of the Order by operation of law and shall be issued a permit by the Bureau.

A person holding a bailiff's permit issued under section 6 of the said Act may act as a bailiff only in the judicial district indicated on the permit issued by the Minister of Justice.

26. Every person who, on (*insert here the date of coming into force of this section*), is the holder of a trainee's permit issued by the Minister of Justice is entitled to be issued a bailiff's permit if he complies with the provisions of subparagraph *f* of the first paragraph of section 4 of the Bailiffs Act (R.S.Q., chapter H-4) or if he meets the requirements of a regulation made by the Order under paragraph *i* of section 94 of the Professional Code.

27. A diploma of college studies in legal technology awarded by the Minister of Education before the coming into force of a government regulation, made under the first paragraph of section 184 of the Professional Code, determining for the first time the diplomas which give access to the permit issued by the Order shall be recognized as valid for the purpose of obtaining a bailiff's permit.

28. Notwithstanding section 6 of this Act, the first Bureau shall be composed of the president and directors elected at the last general meeting of the members of the *Chambre des huissiers de justice du Québec*, a body incorporated under Part III of the Companies Act (R.S.Q., chapter C-38), and of three directors appointed by the Office des professions du Québec pursuant to section 78 of the Professional Code.

The elected president and directors shall remain in office until the first election of the members of the Bureau held in accordance with the Professional Code.

29. Section 95.2 of the Professional Code applies to the first regulation made by the Bureau of the Order under section 65 of the said Code.

30. Notwithstanding section 86 of the Professional Code, the first resolution passed by the Bureau for the purpose of fixing the first annual assessment need not, to come into force, be approved by a majority of the members of the Order, and may take into account the sums already paid by the members as members of the Chambre des huissiers de justice du Québec.

31. The provisions of the Regulation respecting the application of the Bailiffs Act (R.R.Q., 1981, c. H-4, r.2) and the Code of ethics of bailiffs (R.R.Q., 1981, c. H-4, r.1), made under section 25 of the Bailiffs Act (R.S.Q., chapter H-4) continue to have effect until they are amended, replaced or repealed by regulation of the Bureau of the Order in accordance with the Professional Code.

32. The provisions of the Tariff of fees and transportation expenses of bailiffs (R.R.Q., 1981, c. H-4, r.3) established under subparagraph *k* of the first paragraph of section 25 of the Bailiffs Act (R.S.Q., chapter H-4) apply until they are amended, replaced or repealed by regulation of the Government.

33. The examination of complaints received before (*insert here the date of coming into force of this section*) by the committee on discipline established under section 12.1 of the Bailiffs Act (R.S.Q., chapter H-4) shall be continued by that committee, which shall retain its competence and powers for such purpose.

A decision of the committee is executory from the date specified therein and notified to the Bureau of the Order.

34. Appeals brought before (*insert here the date of coming into force of this section*) under Division II.2 of the Bailiffs Act (R.S.Q., chapter H-4) shall be continued and decided in accordance with the provisions of that Act.

35. Penal proceedings for offences under the Bailiffs Act (R.S.Q., chapter H-4) committed before (*insert here the date of coming into force of this section*) shall be continued and decided in accordance with the provisions of that Act.

36. The Order succeeds to the rights and obligations of the Chambre des huissiers de justice du Québec.

The original letters patent and supplementary letters patent granted to the Chambre des huissiers de justice du Québec are cancelled.

37. This Act replaces the Bailiffs Act (R.S.Q., chapter H-4).

38. The provisions of this Act will come into force on the date or dates to be fixed by the Government.