



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 85

An Act respecting certain aspects of the status of municipal judges

Introduction

**Introduced by
Mr Gil Rémillard
Minister of Justice**

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EXPLANATORY NOTES

This bill amending the Cities and Towns Act (R.S.Q., chapter C-19), the Municipal Courts Act (R.S.Q., chapter C-72) and the Courts of Justice Act (R.S.Q., chapter T-16) proposes various measures pertaining to the appointment, remuneration and other conditions of employment of municipal judges.

The bill also sets down new provisions concerning ethical matters and the oath of office or solemn affirmation.

Bill 85

An Act respecting certain aspects of the status of municipal judges

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 606 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended by replacing the first paragraph by the following paragraphs:

“606. The Government shall, by a commission under the Great Seal, appoint a municipal judge for each of the municipal courts it designates.

The Government may appoint several judges to the same court where it considers it necessary to ensure the proper functioning of that court.”

2. The said Act is amended by inserting, after section 606, the following section:

“606.1 A municipal judge shall be appointed to hold office during good behaviour. The rules provided in the Courts of Justice Act (R.S.Q., chapter T-16) with respect to the removal of judges apply to municipal judges.”

3. The said Act is amended by replacing sections 607 to 611 by the following sections:

“607. Municipal judges shall be appointed from among advocates having at least ten years’ practice.

The years during which a person acquired pertinent legal experience after obtaining a diploma of admission to the Barreau du Québec or a certificate of competence to practise the profession of advocate in Québec may be considered as years of practice.

“607.1 No person shall be appointed a municipal judge unless he has been previously selected according to the procedure established by government regulation for the selection of persons apt for appointment as judges. The regulation may, in particular,

(1) determine the procedure by which a person may become a candidate for the office of municipal judge;

(2) authorize the Minister of Justice to establish a selection committee to assess the competence of candidates for the office of municipal judge and advise him in that respect;

(3) fix the composition and mode of appointment of the members of the committee;

(4) determine the criteria of selection that the committee is to consider;

(5) determine the information that the committee may require from a candidate and the consultations it may make.

Members of the selection committee are not entitled to remuneration, except in such cases, under such conditions and to such extent as may be determined by the Government. Expenses incurred in the exercise of their functions shall, however, be reimbursed, subject to the conditions and to the extent determined by the Government.

“608. Notwithstanding any provision to the contrary, neither the acceptance of the office of municipal judge nor the performance of the duties of such office shall prevent an advocate from practising as an advocate before a court of justice, but he shall thereby be prevented from practising as an advocate before any municipal court other than those of Laval, Montréal and Québec.

“608.1 A municipal judge who continues to practise as an advocate shall, in addition to complying with the standards of conduct and fulfilling the duties imposed by the code of ethics adopted pursuant to section 261 of the Courts of Justice Act, observe the following rules:

(1) He shall not, even indirectly, enter into a contract with a municipality in the territory in which the municipal court has jurisdiction, except in the cases provided in section 305 of the Act

respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2), adapted as required, nor shall he advise any person negotiating such a contract;

(2) He shall not, even indirectly, agree to represent or act against a municipality, a member of the municipal council, an employee other than an employee within the meaning of the Labour Code (R.S.Q., chapter C-27) or a police officer of a municipality within the territory in which the municipal court has jurisdiction;

(3) He shall not hear a case pertaining to a contract described in paragraph 1 to which an advocate with whom he practises as an advocate is a party or a case in which such an advocate is representing or acting against a municipality or person contemplated in paragraph 2;

(4) He shall not hear a case involving a question similar to one involved in another case in which he represents one of the parties;

(5) He shall, with respect to every case referred to him, make and file in the record a declaration stating not only the grounds of recusation to which he is aware he is liable and which are set out in article 234 of the Code of Civil Procedure (R.S.Q., chapter C-25), but also any grounds indirectly connected with him and arising from the fact that he is representing one of the parties or from the activities of a person with whom he practises as an advocate.

“609. The Government shall fix, by order, the scales of the remuneration to be paid to municipal judges and deputy municipal judges according as the office is held on a full-time or part-time basis. It may, in the same manner, establish other conditions of employment applicable to municipal judges and their social benefits.

The remuneration, conditions of employment and social benefits shall be paid by or provided at the expense of the municipality and cannot be reduced.

Every order made pursuant to this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date fixed therein.

“609.1 A municipal judge ceases to hold office when he reaches seventy years of age or where the municipal court to which he is appointed is abolished.

“610. Where a municipal judge dies, resigns, is unable to exercise his functions or otherwise ceases to do so, the municipality shall forthwith notify the Minister of Justice. The Minister may, if the

circumstances so require, designate, by order, a judge of another municipal court to replace him until a new judge is appointed to such court by the Government. The judge so designated is competent to hear any case that has been referred to the municipal judge.

The order shall be published in the *Gazette officielle du Québec*.

“611. A municipal judge may, where he removes himself from a case or where he is temporarily unable to exercise his functions by reason of absence or illness, appoint, by commission, a deputy municipal judge chosen from among the judges of other municipal courts whose names appear on a list drawn up by the Minister of Justice in respect of the court where the judge exercises his functions.

The deputy municipal judge has all the rights, powers and privileges of the judge whom he replaces and shall remain in office for the time indicated in the commission or, if no time is indicated, from the date on which the commission is filed in the municipal court registry until the commission is revoked.

A copy of the commission shall be forwarded, without delay, to the Minister of Justice.”

4. Section 615 of the said Act is amended by striking out the words “the municipal judges,” in the second line of the first paragraph.

5. The said Act is amended by inserting, after section 615, the following section:

“615.1 Before entering upon his duties of office, every municipal judge shall make the following oath or solemn affirmation: “I swear (*or solemnly affirm*) that I will faithfully, impartially and honestly, and to the best of my knowledge and abilities, fulfil all the duties and exercise all the powers of a judge of a municipal court.”

The oath or solemn affirmation shall be made before a judge of the Court of Québec and the writing evidencing it shall be transmitted to the Minister of Justice.”

6. Division III and section 8 of the Municipal Courts Act (R.S.Q., chapter C-72) are repealed.

7. Section 3 of the Courts of Justice Act (R.S.Q., chapter T-16), amended by section 3 of chapter 21 of the statutes of 1988, is again amended by replacing the words “or the members of the Court of Justices of the Peace” at the end by the words “, the members of the Court of Justices of the Peace or the municipal judges acting in that capacity”.

8. Section 262 of the said Act, amended by section 57 of chapter 21 of the statutes of 1988, is again amended by adding, at the end of the second paragraph, the following sentence: "For the purposes of this chapter, the rules set out in section 608.1 of the Cities and Towns Act (R.S.Q., chapter C-19) are deemed to be special provisions of the code of ethics applicable to municipal judges who continue to practise as advocates."

9. Section 279 of the said Act, amended by section 62 of chapter 21 of the statutes of 1988, is again amended by striking out the words "or, if it concerns a judge of a Municipal Court other than that of Laval, Montréal or Québec, recommends his dismissal to the Minister" in subparagraph *b* of the first paragraph.

10. The judges appointed for a municipal court who hold office on (*insert here the date of coming into force of this section*) are deemed to have been appointed under this Act.

11. This Act comes into force on (*insert here the date of assent to this Act*).