



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 142

An Act to amend the Youth Protection Act

Introduction

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



**Québec Official Publisher
1989**

EXPLANATORY NOTES

This bill makes various amendments to the Youth Protection Act.

Firstly, it amends the rules applicable to the testifying of children at judicial proceedings in matters of youth protection.

In that connection, the bill recognizes, to a specified extent, the ability of children to testify at such proceedings and removes the necessity of presenting corroborating evidence. Moreover, it allows the tribunal, subject to certain conditions, to dispense a child from testifying. It also establishes the admissibility, as evidence, of certain extrajudicial declarations of a child who is not fit to testify or is dispensed from testifying by the tribunal; it further provides, however, that decisions of the tribunal cannot be made on the strength of such declarations unless they are corroborated by other evidence. Under the new provisions, the tribunal is empowered, subject to certain conditions, to hear a child outside the presence of the other parties in order to allow him to testify more freely.

Secondly, the bill proposes amendments to change the name of the Comité de la protection de la jeunesse.

Finally, a number of other amendments are made to the Youth Protection Act, including provision for the holding of pre-trial conferences.

ACT AMENDED BY THIS BILL:

- Youth Protection Act (R.S.Q., chapter P-34.1)

Bill 142

An Act to amend the Youth Protection Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 1 of the Youth Protection Act (R.S.Q., chapter P-34.1), amended by section 118 of chapter 21 of the statutes of 1988, is again amended

(1) by replacing subparagraph *a* of the first paragraph by the following subparagraph:

“(a) “Commission” means the Commission de protection des droits de la jeunesse established by this Act;”;

(2) by inserting, after subparagraph *f* of the first paragraph, the following subparagraph:

“(g) “tribunal” means the Court of Québec established by the Courts of Justice Act (R.S.Q., chapter T-16);”.

2. Section 12 of the said Act is replaced by the following section:

“**12.** A body is hereby established under the name of “Commission de protection des droits de la jeunesse”.”

3. Section 23.1 of the said Act is replaced by the following section:

“**23.1** The duty provided for in paragraph *b* of section 23, except for the decision to investigate, must be discharged by a group of not less than three members of the Commission designated by it and including the president; the president may designate the vice-president to replace him.

The decision to investigate is made by the president or any member designated by him.

The Commission may review any decision made under the preceding paragraphs.”

4. The English text of section 38.1 of the said Act is amended by replacing the word “is” in the first line by the words “may be”.

5. Section 76 of the said Act is amended by replacing the word “thirty” in the fourth line of the first paragraph by the word “sixty”.

6. Section 84 of the said Act is amended by adding, at the end, the following paragraph:

“The advocate of any other person excluded from the court-room may remain in the court-room to represent him.”

7. Section 85 of the said Act is amended by replacing the words and figures “and 280 to 331” in the first line by the words and figures “, 279 to 300 and 302 to 331”.

8. The said Act is amended by inserting, after section 85, the following sections:

“85.1 Any child fourteen years of age or older is competent to testify under oath or after making a solemn affirmation unless, because of his physical or mental condition, he is not in a fit state to report the facts known to him. The same applies to any child under fourteen years of age who, in the opinion of the tribunal, understands the meaning of an oath or solemn affirmation.

“85.2 Any child under fourteen years of age who, in the opinion of the tribunal, does not understand the meaning of an oath or solemn affirmation may be permitted to testify without that formality if the tribunal is of the opinion that he is able to report the facts known to him and understands that he has the duty to tell the truth.

“85.3 Any child who is competent to testify may be compelled to do so.

However, the tribunal may, by way of exception, dispense a child from testifying if it believes that testifying could be prejudicial to the mental or emotional development of the child.

“85.4 The tribunal may, by way of exception and if it believes that it is warranted in the circumstances, hear a child outside the

presence of any person who is a party to the proceedings after having so notified that person.

However, the advocate of any person excluded from the court-room may remain in the court-room to represent his client.

Any person in the absence of whom testimony is given may take cognizance of it. The tribunal may, however, make any order which appears necessary to ensure that the confidential nature of the information the person may take cognizance of is respected.

85.5 Where a child is not competent to testify or has been dispensed therefrom by the tribunal, his declaration made prior to the proceedings is admissible as proof of the existence of the facts alleged therein.

However, the tribunal shall not rule that the security or development of the child is endangered on the strength of the declaration unless it is corroborated, to the satisfaction of the tribunal, by other evidence confirming its reliability.

85.6 Where a declaration referred to in section 85.5 was recorded on magnetic tape or by any other reliable means, the recording may serve as proof thereof provided that its authenticity is established separately.

Where the declaration was not recorded, its authenticity must be proved by the testimony of persons having witnessed it."

9. Section 96.1 of the said Act is amended by replacing the word and figure "section 96" in the second line by the words and figures "the second paragraph of section 85.4 or section 96".

10. Section 134 of the said Act is amended by inserting the words and figure "paragraph *b* of section 23 or" after the word "under" in the third line of subparagraph *b* of the first paragraph.

11. The said Act, amended by section 119 of chapter 21 of the statutes of 1988, is again amended by replacing, unless the context indicates otherwise, the words "Court of Québec" wherever they appear by the word "tribunal".

12. Unless the context indicates otherwise, in every Act and statutory instrument and in every contract or document, the words "Comité de la protection de la jeunesse" are replaced by the words "Commission de protection des droits de la jeunesse" and the word

“Comité” or “committee”, where it designates the Comité de la protection de la jeunesse, is replaced by the word “Commission”.

13. This Act comes into force on 1 October 1989.