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# NATIONAL ASSEMBLY

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SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 148

## **An Act to amend the Bailiffs Act**

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### **Introduction**

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

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**Québec Official Publisher  
1989**

## EXPLANATORY NOTES

*The object of this bill is to amend the Bailiffs Act, particularly with respect to the requirements for performance of the duties of bailiff.*

*The bill provides that the bailiff appointed to a municipal court must, to perform his duties, hold a bailiff's permit issued by the Minister of Justice, but also fixes special conditions governing such a bailiff.*

*The bill proposes amendments with respect to the treatment of complaints before the ethics committee and the penalties it may impose.*

*Furthermore, the bill sets out conditions for the resumption of the duties of bailiff, which vary according to the period of time during which the bailiff ceased to perform his duties or for which his permit was revoked.*

*The bill proposes amendments relating to professional inspection and the powers of inspectors.*

*Lastly, the bill contains transitional provisions respecting certain applications for a trainee's permit, and respecting bailiffs already performing duties with a municipal court.*

### ACT AMENDED BY THIS BILL:

- Code of Civil Procedure (R.S.Q., chapter C-25).

### ACT REPEALED BY THIS BILL:

- Act to consolidate the act incorporating the Bailiffs of the district of Montreal (1902, chapter 43).

# Bill 148

## An Act to amend the Bailiffs Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

**1.** The French title of the Bailiffs Act (R.S.Q., chapter H-4) is replaced by the following title:

“LOI SUR LES HUISSIERS DE JUSTICE”.

**2.** The heading of Division I of the Bailiffs Act is replaced by the following heading:

“COMPETENCE OF BAILIFFS”.

**3.** Section 1 of the said Act is replaced by the following sections:

“**1.** A bailiff is an officer empowered to serve written proceedings issuing out of any court, carry out judicial decisions that are executory and perform any other duty devolving upon him by law.

The court officer referred to as a “huissier de justice” may also be referred to as a “huissier”.

“**1.1** Every bailiff must perform his duties without partiality. The giving of information to any person liable to be party to legal proceedings does not constitute an act of partiality.”

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

“**2.** No person may act as bailiff or perform the duties of bailiff, even in a municipal court, without holding a permit issued by the Minister of Justice for that purpose.”

**5.** Section 3 of the said Act is repealed.

**6.** Section 4 of the said Act is amended

(1) by replacing the word “requérant” in the first line of the French text by the word “demandeur”;

(2) by striking out the words “, accompanied with the security determined” in the second line of paragraph *a*;

(3) by striking out the words “be a Canadian citizen or undertake to apply for Canadian citizenship without delay but, in such latter case,” in the first and second lines of paragraph *b*;

(4) by replacing paragraph *d* by the following paragraphs:

“(d) be the holder of a diploma of college studies in legal technology issued by the Minister of Higher Education and Science, or a diploma deemed equivalent by the Minister, or any other diploma the obtention of which requires, in the opinion of the Minister, at least the knowledge required for the obtention of either of those diplomas;

“(d.1) have taken the vocational training course provided by the Ministère de la Justice;”;

(5) by striking out paragraph *g*;

(6) by replacing paragraph *h* by the following paragraph:

“(h) not have been found guilty of an indictable offence under Part IX or sections 265, 266, 380 to 402 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or, to the extent that it concerns a conspiracy with a view to committing such a criminal offence, under Part XIII of the said Code;”;

(7) by replacing the words “prescribed information” in paragraph *i* by the words “information prescribed by regulation”;

(8) by striking out paragraph *j*;

(9) by adding, at the end, the following paragraphs:

“Before serving the period of professional training referred to in subparagraph *e* of the first paragraph, the applicant shall obtain a trainee’s permit from the Minister if he meets the conditions set out in subparagraphs *b*, *c*, *d*, *d.1*, *h* and *i* of the first paragraph.

The form and tenor of the application for a trainee’s permit and the term of the permit shall be determined by regulation.”

**7.** The said Act is amended by inserting, after section 4, the following section:

**“4.1** Before issuing a permit or a trainee’s permit, the Minister shall inquire as to whether the applicant has the required probity and competence to perform the duties of bailiff.”

**8.** Section 5 of the said Act is replaced by the following section:

**“5.** The Minister shall issue a permit if the applicant meets the conditions contemplated in sections 4 and 4.1 and provides such security, pays such costs and makes such oath as are prescribed by regulation. However, no security is required for a bailiff appointed to a municipal court if he performs his duties only in that court.

Every permit holder has competent authority to perform the duties of bailiff in all the judicial districts of Québec.”

**9.** Section 6 of the said Act is amended by replacing, in the French text, the word “Nonobstant” by the word “Malgré” and the word “émettre” by the word “délivrer” in the first line of the first paragraph and the word “détenteur” by the word “titulaire” in the first line of the second paragraph.

**10.** Section 8 of the said Act is amended by replacing the words “prescribed annual duties” in the second line by the words “annual duties prescribed by regulation”.

**11.** Section 9 of the said Act is replaced by the following section:

**“9.** The Minister shall revoke the permit of a bailiff who no longer meets the requirements of paragraphs *b* and *h* of section 4.

He shall also revoke the permit of a bailiff who omits to pay the annual duties referred to in section 8 or fails to provide the security prescribed by regulation.”

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

**“12.** The Minister shall transmit a copy of the letter contemplated in section 11, where it concerns the revocation of a permit, to the prothonotary of the judicial district where the bailiff’s office is situated and to all bailiffs.

The prothonotary shall post up the letter in the Court House and notify the Minister in writing of the posting date.”

**13.** The said Act is amended by inserting, after section 12, the following section:

**“12.0.1** The Minister may suspend the permit of a bailiff who fails to produce the documents required under section 29.6.

Before suspending the permit, he shall give the bailiff, by registered or certified mail, a ten days' notice of his intention and the reasons for the suspension.

The bailiff may present his views before the expiry of the ten days.”

**14.** Section 12.2 of the said Act is amended by replacing the words “not exceeding five years” in the second line of the first paragraph by the words “of not over three years”.

**15.** Section 12.3 of the said Act is amended by adding, at the end, the words “or in the immediate vicinity of either of those communities”.

**16.** The said Act is amended by inserting, after section 12.4, the following heading:

“DIVISION II.1.1

“COMPLAINTS”.

**17.** Section 12.5 of the said Act is amended

(1) by replacing the words “refused, failed or neglected” in the third line of the first paragraph by the words “omitted or refused” and by striking out the words “after having been required to do so by a written document of the Minister” in the fourth and fifth lines of the said paragraph;

(2) by replacing the words “done acts contrary to the dignity of his office as determined by regulation” in the second and third lines of the second paragraph by the words “transgressed the code of ethics prescribed by regulation”.

**18.** Section 12.6 of the said Act is amended by replacing the first paragraph by the following paragraph:

**“12.6** A complaint may be made by any person; it must give an account of the facts, be accompanied by a sworn statement and be made in writing to the secretary of the committee.”

**19.** The said Act is amended by inserting, after section 12.7, the following section:

**“12.7.1** Every hearing shall be public.

The committee may, however, of its own initiative or upon request, in the interest of morality or public order, order that a hearing be held *in camera* or ban the publication or release of any information or documents it indicates.

Every person who, by his act or omission, infringes an order to hold a hearing *in camera* or an order banning publication or release is guilty of contempt of court.”

**20.** Sections 12.9 and 12.10 of the said Act are replaced by the following sections:

**“12.9** If, after the hearing, the committee is satisfied that the complaint is founded, it shall impose on the bailiff one or several of the following penalties, according to the seriousness or frequency of the breach of the prescriptions of this Act or the regulations:

(1) a reprimand;

(2) a fine of not less than \$250 nor more than \$1 000;

(3) the suspension of his permit for a period of not under one month nor over 12 months;

(4) the revocation of his permit, with an indication of the period during which he cannot reapply for a permit.

**“12.10** The decision of the committee shall be made by a majority of its members; it must state the reasons on which it is based and be signed.

**“12.11** A decision of the committee imposing a fine may, in default of voluntary payment, be homologated by the Court of Québec and such decision shall become executory as a judgment of that court on the twenty-first day from the date on which it is transmitted to the respondent by registered or certified mail, and shall entail the suspension of the permit of the respondent until he pays the amounts due.

**“12.12** A decision of the committee imposing the suspension or revocation of the permit of a bailiff shall, subject to section 15, become executory from the date specified in the decision.

**“12.13** Where a decision of the committee imposes the suspension or revocation of the permit of a bailiff, the secretary of the committee shall send a copy of the decision of the committee to the parties, to the Minister and to the prothonotary of the judicial district where the office of the bailiff is situated and to all bailiffs.

The prothonotary shall post up the decision in the Court House and notify the committee and the Minister in writing of the date of posting.

Where a decision of the committee imposes a fine or dismisses a complaint, the secretary of the committee shall send a copy of the decision to the parties and to the Minister.

**“12.14** The secretary of the committee shall transmit to the Minister, before 31 May each year, an annual report of the activities of the committee in which he shall indicate the number and nature of complaints made, of complaints dismissed and of penalties imposed.

#### “DIVISION II.1.2

##### “CONDITIONS FOR RESUMPTION OF DUTIES OF BAILIFF

**“12.15** A bailiff who abandons the duties of bailiff or whose permit has been revoked may resume such duties under the conditions set out in sections 12.16, 12.17 and 12.18.

**“12.16** Where a bailiff has abandoned the duties of bailiff, the conditions for the issue of a new permit are the following:

(1) in the case of abandonment for a period of under two years, the applicant must fulfil the requirements of subparagraphs *a*, *b*, *h* and *i* of the first paragraph of section 4 and section 4.1;

(2) in the case of abandonment for a period of two to five years, the applicant must fulfil the requirements of subparagraphs *a*, *b*, *d.1*, *e*, *h* and *i* of the first paragraph of section 4 and section 4.1;

(3) in the case of abandonment for a period of over five years, the applicant must fulfil the requirements of subparagraphs *a*, *b*, *d.1*, *e*, *f*, *h* and *i* of the first paragraph of section 4 and section 4.1.

**“12.17** A bailiff whose permit has been revoked under the first paragraph of section 9 or under paragraph 4 of section 12.9 cannot reapply for a permit before the expiry of the period specified in the decision of the Minister or of the committee, as the case may be.



The bailiff is eligible for a new permit if he fulfils the requirements of subparagraphs *a, b, d.1, e, f, h* and *i* of the first paragraph of section 4 and section 4.1.

**“12.18** A bailiff whose permit has been revoked under the second paragraph of section 9 is eligible for a new permit if he pays the exigible annual duties to the Minister or provides him with the security prescribed by regulation.

He shall also pay to the Minister such penalty as is prescribed by regulation.”

**21.** Section 19 of the said Act is amended by striking out the words “and to the Chambre des notaires du Québec” in the third and fourth lines.

**22.** Section 20 of the said Act is amended by inserting the word and figure “or 12.13” after the figure “12” in the first line.

**23.** Section 21 of the said Act is repealed.

**24.** Section 22 of the said Act is replaced by the following section:

**“22.** The Government shall establish an advisory committee to advise the Minister on the application of this Act and the regulations, consisting of six members including two bailiffs, two members of the Barreau du Québec and two other members who are neither bailiffs nor advocates.”

**25.** Section 23 of the said Act is replaced by the following section:

**“23.** The members of the advisory committee shall receive no remuneration except in such cases, on such conditions and to such extent as the Government may determine. They are entitled, however, on such conditions and to such extent as the Government may determine, to be reimbursed for expenses incurred in the performance of their duties.”

**26.** Section 25 of the said Act is amended

(1) by replacing the word “duties” in the first line of subparagraph *b* of the first paragraph by the words “costs and annual duties”;

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

“(b.1) determine the form and tenor of an application for a trainee’s permit and the term of such permit;”;

(3) by inserting, after subparagraph *c* of the first paragraph, the following subparagraph:

“(c.1) determine the amount of penalty that the bailiff must pay to the Minister where he has failed to pay the annual duties exigible or to provide the security prescribed by regulation;

“(c.2) determine the form and tenor of the oath that the bailiff is required to make;”;

(4) by replacing the word “fiducie” in the second line of subparagraph *d* of the first paragraph of the French text by the word “fidéicommiss”;

(5) by striking out the words “dignity or” in the second line of subparagraph *g* of the first paragraph;

(6) by replacing subparagraph *h* of the first paragraph by the following subparagraph:

“(h) establish a code of ethics for bailiffs;”;

(7) by replacing the words “and accounts” in subparagraph *j* of the first paragraph by the words “, accounts and other documents”;

(8) by inserting, after subparagraph *j* of the first paragraph, the following subparagraph:

“(j.1) determine the costs for copying a thing seized under section 29.4;”;

(9) by striking out subparagraph *m* of the first paragraph;

(10) by replacing the second paragraph by the following paragraph:

“Regulations made under subparagraphs *c*, *d*, *e*, *f*, *j*, *j.1* and *k* of the first paragraph do not apply to a bailiff appointed to a municipal court if he performs his duties only in that court.”

**27.** Section 26 of the said Act is replaced by the following section:

**“26.** Every bailiff must keep at his office the books, registers, accounts and other documents prescribed by regulation.”

**28.** Section 27 of the said Act is amended by replacing the word “fiducie” in the first line of the French text by the word “fidéicomis” and by inserting the words “by regulation” after the word “prescribed” in the second line.

**29.** Section 29 of the said Act is replaced by the following sections:

**“29.** An inspector may, when carrying out an inspection, have access at any reasonable time to a bailiff’s office, examine the books, registers, accounts or other documents containing information relating to the performance of the duties of bailiff, take notes or make copies thereof and require any information relating to the application of this Act or the regulations.

An inspector may also demand reasonable assistance from a bailiff who is on the premises of an inspection.

The inspector shall, on request, identify himself and produce a certificate of his quality signed by the Minister.

**“29.1** An inspector may, when carrying out an inspection, seize any books, registers, accounts, documents or other property if he has reasonable grounds to believe that an offence against this Act or the regulations thereunder has been committed in relation to or by means of such documents.

He shall prepare a report setting out

- (1) the date, time and place of the seizure;
- (2) the circumstances of and reasons for the seizure;
- (3) a summary description of the thing seized;
- (4) the name of the person from whom the thing was seized;
- (5) any information allowing the identification of the owner or possessor of the thing seized;
- (6) the identity and capacity of the seizer.

**“29.2** Every inspector shall, as soon as practicable, make a report to the Minister of any seizure he makes.

**“29.3** The thing seized must be deposited with the Minister or at any other place he designates.

Where the thing seized is an amount of money, the Minister shall deposit it in a trust account.

**“29.4** The Minister shall, upon request, allow the owner or possessor of the thing seized to examine it and, upon payment of the costs fixed by regulation, to make a copy thereof.

**“29.5** The thing seized must be returned to the owner or possessor thereof after the expiry of a period of 90 days from the date of seizure, unless proceedings have been instituted before a justice of the peace or unless a complaint has been filed with the committee.

Where the inspector is of opinion, after verification during that period, that no offence against this Act or the regulations thereunder has been committed, the thing seized shall be returned to its owner or possessor as soon as practicable.

A justice of the peace may, on the application of the seizer, order that the period of detention be extended for a period of not over 90 days.

**“29.6** An inspector may, upon written application, require of a bailiff, within such reasonable time as he may fix, that he produce, free of charge and by registered or certified mail, a copy of the books, registers, accounts or other documents referred to in section 26, if he has reasonable grounds to believe that an offence against this Act or the regulations thereunder has been committed.”

**30.** Section 30 of the said Act is replaced by the following section:

**“30.** No person may hinder an inspector in the performance of his duties, in particular by misleading him by concealment or false declarations, by refusing to produce a document or information he is entitled to examine or demand, by concealing or destroying a document useful to an inspection or by refusing to give him reasonable assistance.”

**31.** Section 32 of the said Act is amended by striking out the word “neglects” in the first line and by replacing the word “proceeding” in the second line by the words “written proceeding”.

**32.** Section 33 of the said Act is replaced by the following section:

**“33.** Every person who contravenes the third paragraph of section 12.7, the second paragraph of section 12.8 or any of sections 26, 27 and 30 is guilty of an offence and is liable to a fine of not less than \$250 nor more than \$1 000 for the first offence and, for any subsequent offence within two years, to a fine of not less than \$500 nor more than \$2 000.”

**33.** Section 34 of the said Act is replaced by the following section:

**“34.** Proceedings under this Act shall be instituted by the Attorney General or by a person he authorizes generally or specially in writing for that purpose.”

**34.** Notwithstanding the first paragraph of section 5 of the Bailiffs Act, as enacted by section 8, the Minister shall issue a permit to a bailiff who is appointed to a municipal court and is performing the duties of bailiff only in that court on *(insert here the date of coming into force of this section)* if the bailiff transmits his application for a permit to the Minister within six months after that date.

A bailiff who fails to fulfil the requirement of the first paragraph within the prescribed time can no longer perform the duties of bailiff.

**35.** Any breach of the provisions of the Bailiffs Act or the regulations having occurred before *(insert here the date of coming into force of this section)* remains governed by the legislative and regulatory provisions applicable on *(insert here the date immediately preceding the date of coming into force of this section)*.

**36.** The conditions for the obtention of a permit that are set out in sections 6 and 7 apply to any person whose application for a trainee's permit was transmitted to the Minister after *(insert here the date of introduction of this bill)*.

**37.** The second paragraph of article 120 of the Code of Civil Procedure (R.S.Q., chapter C-25), replaced by section 1 of chapter 6 of the statutes of 1989, is again replaced by the following paragraph:

“The costs of service that may be taxed are equal to the fees and travelling expenses that may be claimed by a bailiff pursuant to the regulation made under the Bailiffs Act (R.S.Q., chapter H-4), as amended by the Act to amend the Bailiffs Act (1989, chapter *(insert here the chapter number of this Act in the annual volume of statutes for 1989)*).”

**38.** The third paragraph of article 554 of the Code of Civil Procedure, replaced by section 3 of chapter 6 of the statutes of 1989, is again replaced by the following paragraph:

“The costs of execution that may be taxed are equal to the fees and travelling expenses that may be claimed by a bailiff pursuant to the regulation made under the Bailiffs Act (R.S.Q., chapter H-4), as amended by the Act to amend the Bailiffs Act (1989, chapter *(insert here the chapter number of this Act in the annual volume of statutes for 1989)*).”

**39.** The Act to consolidate the act incorporating the Bailiffs of the district of Montreal (1902, chapter 43) is repealed.

**40.** The provisions of this Act will come into force on the date or dates fixed by the Government.