

NATIONAL ASSEMBLY

FIRST SESSION

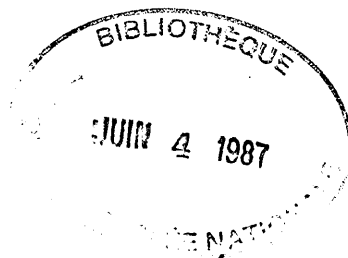
THIRTY-THIRD LEGISLATURE

Bill 26

An Act to amend the Public Protector Act

Introduction

**Introduced by
Mr Herbert Marx
Minister of Justice**



**Québec Official Publisher
1987**

EXPLANATORY NOTES

The primary object of this bill amending the Public Protector Act is to facilitate its application for the benefit of private citizens who experience problems in their relations with the civil administration and to correct certain provisions which raise problems of interpretation.

The bill defines the scope of the mandate of the Public Protector by introducing and giving a specific meaning to the notion of public body and by opening the way to intervention by the Public Protector any act or omission of the civil administration that has infringed or is likely to infringe the rights of an individual, subject to a number of specific exclusions.

It provides the Public Protector with more efficient means for fulfilling his mandate; more particularly, he is expressly granted the power to refer matters within his competence to the Superior Court and he is given leave to comment publicly on his reports and certain of his interventions.

Finally, the bill confirms the fundamental protection afforded by law to the information obtained by the Public Protector in the performance of his duties and amends certain provisions to ensure concordance or to bring them into conformity with the Charter of human rights and freedoms.

Bill 26

An Act to amend the Public Protector Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 5 of the Public Protector Act (R.S.Q., chapter P-32) is replaced by the following section:

“5. Before entering upon their duties, the Public Protector and his assistant shall take the oath or make the solemn affirmation prescribed in the schedule.

The Public Protector shall fulfill his obligation under this section before the President of the National Assembly, and the assistant, before the Public Protector.”

2. Section 8 of the said Act is amended

(1) by inserting, after the third paragraph, the following paragraph:

“If he ceases to perform his duties before the expiration of his term, upon resignation for any other reason than such a disability or upon dismissal, he shall be entitled to an annual pension equal to the pension to which he would have been entitled under the preceding paragraphs if he had completed his term, reduced in such proportion as the months remaining in his term are of the number of months included in the relevant period.”;

(2) by replacing the words “or retired” in the second line of the fifth paragraph by the words “or after having ceased to perform his duties”, and the words “had he been retired” at the end of the paragraph by the words “on ceasing to perform his duties”.

3. Section 2 of the said Act is amended by replacing the words “before him the oaths prescribed in Schedules A and B to this Act” in the second and third lines of the second paragraph by the words “the oath or make the solemn affirmation prescribed in the schedule before the Public Protector”.

4. Section 12 of the said Act, replaced by section 599 of the Act respecting public elementary and secondary education (R.S.Q., chapter E-8.1), is amended by replacing the figures and word “26 to 29” in the last line of the second paragraph by the figures and word “26.1, 26.2, 27, 27.3, 27.4 and 28”.

5. Sections 13 to 19 of the said Act are replaced by the following sections:

“13. The Public Protector shall intervene, subject to sections 18 to 19.1, whenever he has reasonable cause to believe that a person or group of persons has suffered or may very likely suffer prejudice as the result of an act or omission of a public body, its chief executive officer, its members or a person holding an office, employment or position accountable to the chief executive officer.

The Public Protector shall intervene on his own initiative or at the request of any person or group of persons acting on his or its own behalf or on behalf of another person.

“14. For the purposes of this Act, a public body is

(1) a department;

(2) any body, other than the Conseil exécutif and the Conseil du trésor, whose staff is appointed and remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

“15. For the purposes of this Act, the following are deemed public bodies:

(1) every person designated by the National Assembly to hold an office accountable to it, where the law provides that the person’s staff is appointed and remunerated in accordance with the Public Service Act,

(2) the services contemplated in Divisions III and V of Chapter IV of the Act respecting the National Assembly (R.S.Q., chapter A-23.1),

(3) the staff of the Conseil du trésor contemplated in section 20 of the Financial Administration Act (R.S.Q., chapter A-6),

(4) the Public Curator.

“16. Every body or person performing, by delegation, the duties of a public body or person contemplated in section 13 is deemed part of that public body or person for the purposes of this Act.

“17. The members of a public body are accountable to its chief executive officer for the purposes of this Act.

“18. The Public Protector cannot intervene in respect of an act or omission of

(1) a public body or a person, where the person or group whose interests would be concerned by the intervention has a legal remedy that can adequately correct the prejudicial situation within a reasonable time;

(2) a public body or a person, where the person or the group whose interests would be concerned by the intervention has omitted or failed, without any reasonable excuse, to pursue a remedy contemplated in paragraph 1 within the proper time;

(3) a public body or a person who or which, in the particular case, is bound to act by authority of the court;

(4) a person exercising the powers of a peace officer;

(5) a public body or a person, performed in the course of labour relations with the person or group whose interests would be concerned by the intervention;

(6) a member of the office staff of a Minister.

“19. Where more than one year has elapsed since the person or group whose interests would be concerned by the intervention had knowledge of the facts on which the intervention is based, the Public Protector shall refuse to intervene, unless he considers that the circumstances brought forward by the person or group are exceptional.

The Public Protector shall also terminate an intervention or refuse to intervene where any remedy pursued before the Supreme Court of Canada or any court referred to in section 1 of the Courts of Justice Act (R.S.Q., chapter T-16), by the person or group whose interests are concerned by the intervention, pertains to the facts on which the intervention is based.

“19.1 The Public Protector may terminate an intervention or refuse to intervene where, in his opinion,

(1) the person or group applying for his intervention refuses or neglects to furnish the information or documents contemplated in section 20;

(2) the application for intervention is frivolous, vexatious or made in bad faith;

(3) an intervention is not expedient in view of the circumstances.

“19.2 Where the Public Protector terminates an intervention or refuses to intervene, he shall notify the interested person or group of his decision, giving the reasons therefor and, in the case of paragraph 1 of section 18, indicating what remedies are available.

“19.3 The Public Protector may be a party to any motion to the Superior Court under articles 453 to 456 of the Code of Civil Procedure (R.S.Q., chapter C-25) pertaining to his competence and powers.”

6. Division IV of the said Act is replaced by the following division:

“DIVISION IV

“APPLICATIONS FOR INTERVENTION

“20. Every person who applies for the intervention of the Public Protector shall

(1) give his full name, address and telephone number, and the full name, address, telephone number and social insurance number of each person whose interests are concerned by the application;

(2) state the facts justifying the application;

(3) provide the Public Protector with any other information or document which the Public Protector considers necessary for a clear understanding of the facts.

Where he considers it necessary, the Public Protector may require that the application for intervention be made in writing.

“21. The Public Protector, his assistant, and his public servants and employees must lend their assistance in the drafting of an application for intervention to any person who so requires.

“22. Every person holding an office, position or employment in a place where a person is deprived of his freedom shall, when the latter person gives him a writing intended for the Public Protector, transmit the writing forthwith to the Public Protector without reading it.

Similarly, where he receives a writing from the Public Protector intended for the person deprived of his freedom, he shall give it to that person."

7. Division V of the said Act is replaced by the following division:

"DIVISION V

"INTERVENTION

"23. Where the Public Protector deems it expedient to intervene, he shall give the author of the act or omission or, if the latter is a public body, the chief executive officer thereof, an opportunity to be heard and, where appropriate, shall invite him to remedy the prejudicial situation.

Where an intervention which the Public Protector deemed expedient to address to the author and his superiors has failed to remedy the prejudicial situation, the Public Protector shall give the chief executive officer of the public body an opportunity to be heard and, where appropriate, shall invite him to remedy the situation.

"24. Every intervention by the Public Protector shall be in private.

It may include an investigation if that is deemed expedient by the Public Protector.

"25. For the conduct of an investigation, the Public Protector, his assistant and the public servants and employees whom he designates in writing for such purpose shall have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to impose imprisonment.

Articles 307, 308 and 309 of the Code of Civil Procedure apply, adapted as required."

8. Division VI of the said Act is replaced by the following division:

"DIVISION VI

"NOTICES, RECOMMENDATIONS AND REPORTS

"26. Where, after acting pursuant to Division V, the Public Protector is of opinion that no prejudicial situation exists or that the prejudicial situation brought to his attention has been adequately remedied, he shall promptly notify the interested parties.

“26.1 The Public Protector shall notify in writing the chief executive officer of a public body where he is of opinion that the public body or a person accountable to the chief executive officer

- (1) has not complied with the law;
- (2) has acted in an unreasonable, unjust, arbitrary or discriminatory manner;
- (3) has failed in its or his duty or has been guilty of misconduct or negligence;
- (4) has committed an error of law or of fact; or
- (5) in the exercise of a discretionary power, has acted for an unjust purpose, has been actuated by irrelevant motives or has failed to give reasons for its or his discretionary act when it or he should have done so.

“26.2 Where the Public Protector sends a notice to the chief executive officer of a public body, he may add any recommendation he deems useful and ask to be informed of the measures actually taken to remedy the prejudicial situation.

“27. Where, after making a recommendation to the chief executive officer of a public body, the Public Protector is of opinion that no satisfactory measure has been taken within a reasonable time by the chief executive officer to remedy the situation adequately, he shall notify the Government in writing and, if he deems it expedient, he may relate the case in a special report or in his annual report to the National Assembly.

“27.1 The Public Protector shall promptly inform the person or group whose interests are concerned of the results of his intervention.

“27.2 The Public Protector shall, at least once yearly, transmit to the chief executive officer of a public body a summary report stating the number of interventions involving the public body or a person accountable to the chief executive officer during the period covered by the report, and the nature and outcome of each intervention.

“27.3 The Public Protector may, so as to remedy prejudicial situations he has noted in the course of his interventions, avoid the recurrence of such situations or prevent similar situations, call to the attention of the chief executive officer of a public body or to the attention of the Government the necessity of such legislative, regulatory or administrative reform as he deems to be in the public interest.

If the Public Protector deems it expedient, he may explain the situation in a special report or in his annual report to the National Assembly.

“27.4 The Public Protector, where he deems it to be in the public interest, may comment publicly on a report he has submitted to the National Assembly or on any intervention he has made.

He may also comment publicly on any past intervention or on any intervention in progress where he deems it to be necessary in the interest of the person, group, public body, chief executive officer, public servant, employee or officer involved.

“28. On or before 30 September each year, the Public Protector shall transmit to the President of the National Assembly a report to the Assembly of his activities during the preceding calendar year.

The report shall set out the cases in respect whereof the Public Protector made a recommendation pursuant to section 26.2 or issued a notice pursuant to section 27 and, where such is the case, the corrective measures taken by the authority concerned.

“29. Any report to the National Assembly transmitted to the President of the National Assembly by the Public Protector shall be tabled by the President within three days of its receipt if the Assembly is in session or, if not, within three days of resumption.

Every such report shall be published and distributed by the Québec Official Publisher, subject to such conditions and in such manner as the Public Protector considers appropriate.”

9. Section 33 of the said Act is replaced by the following sections:

“33. Every person who, without being duly authorized, discloses information obtained by him in the performance of his duties as assistant, public servant or employee of the Public Protector, is guilty of an offence and liable, in addition to costs, to a fine of \$300 to \$1 000.

“33.1 Every person who contravenes any of the provisions of section 22 is liable, in addition to costs, to a fine of \$300 to \$1 000.

“33.2 Proceedings under this Act are instituted in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General or any person specially or generally authorized by him for that purpose.”

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

“34. Notwithstanding any Act inconsistent herewith, no person may be compelled to give evidence with respect to information obtained by him in the performance of his duties as Public Protector, or as assistant, public servant or employee of the Public Protector, nor to produce any document containing such information.

Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), no person has a right of access to such a document.”

11. Section 37 of the said Act is repealed.

12. Schedules A and B to the said Act are replaced by the following schedule:

“SCHEDULE

“OATH OR SOLEMN DECLARATION

“I swear (*or* solemnly declare) that I will fulfill my duties with honesty, impartiality and justice and that I will not accept any other sum of money or advantage for anything I will do in the discharge of my duties other than what may be allowed me by law.

I further swear (*or* solemnly declare) that I will not disclose, unless duly authorized, any information I may obtain in the discharge of my duties.”

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