

NATIONAL ASSEMBLY

SECOND SESSION

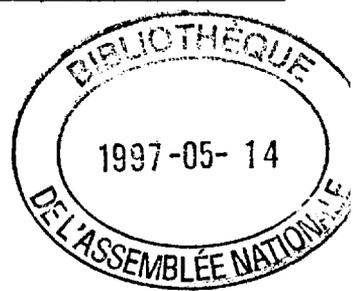
THIRTY-FIFTH LEGISLATURE

Bill 136

An Act to amend the Act respecting police organization and the Police Act as regards police ethics

Introduction

**Introduced by
Mr Robert Perreault
Minister of Public Security**



EXPLANATORY NOTES

This bill amends the provisions of the Act respecting police organization governing the mechanisms and functioning of the police ethics system in Québec.

The bill provides that a citizen wishing to file a complaint regarding a police officer's conduct may do so with any police force or with the police ethics commissioner. The person receiving the complaint is required to assist the complainant and to help in identifying the evidence the complainant needs to substantiate the complaint. The person must also inform the complainant that the complaint will be referred to conciliation. After making a preliminary analysis of the complaint, the police ethics commissioner must decide whether it should be dealt with under his jurisdiction, as is the case for all events involving the public interest or events involving death or serious bodily injury, and also for complaints that are clearly frivolous or trivial. In other cases, the commissioner will designate a conciliator. If conciliation fails, the complaint is returned to the commissioner who must decide whether to reject it or to order an investigation.

Where an investigation is considered to be appropriate, the commissioner will designate an investigator who must complete the investigation within three months. An investigator may not, however, be assigned to a case involving a police force to which he belongs or formerly belonged. Following an investigation, the commissioner may reject the complaint or summon the police officer before the police ethics committee.

The bill provides that sittings of the ethics committee will be held by one member who is an advocate. The bill also provides that a part-time member from a Native community will sit on the committee when a complaint relates to a Native police officer.

The bill further provides that a motion may be made to the Court of Québec to have the Court summarily dismiss an improper or dilatory appeal from a decision of the police ethics committee.

Lastly, the bill contains technical and consequential amendments and transitional provisions.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting police organization (R.S.Q., chapter O-8.1);
- Police Act (R.S.Q., chapter P-13).

Bill 136

AN ACT TO AMEND THE ACT RESPECTING POLICE ORGANIZATION AND THE POLICE ACT AS REGARDS POLICE ETHICS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 39 of the Act respecting police organization (R.S.Q., chapter O-8.1) is replaced by the following section:

“39. The Government may appoint a deputy commissioner and fix his remuneration, employment benefits and other conditions of employment.”

2. Section 40 of the said Act is replaced by the following section:

“40. The deputy commissioner shall be appointed for a specified term not exceeding five years. His term may be renewed.”

3. Section 41 of the said Act is amended

(1) by replacing the word “commissioners” in the first line of the first paragraph by the word “commissioner”;

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

“The commissioner and deputy commissioner shall do so before a judge of the Court of Québec.”

4. Section 42 of the said Act is amended by replacing the word “commissioners” in the second line by the word “commissioner”.

5. Section 43 of the said Act is replaced by the following section:

“43. The commissioner, the deputy commissioner and the members of their staff, the investigators and the certified police ethics conciliators cannot be sued by reason of any official act done in good faith in the performance of their duties.”

6. Section 44 of the said Act is amended

(1) by striking out the words “designated by the Government” in the second line of the first paragraph;

(2) by replacing the words “If a” in the first line of the second paragraph by the words “If the”.

7. Section 46 of the said Act is amended

(1) by replacing the word “commissioners” in the first line of the first paragraph by the word “commissioner”;

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

“The commissioner may delegate, in writing, each of his powers to the deputy commissioner.”

8. Section 47 of the said Act is amended by replacing the words “commissioners or the members of his staff shall not” in the second line by the words “commissioner, the deputy commissioner, the members of their staff, the investigators and the certified police ethics conciliators may not be”.

9. Section 51 of the said Act is amended by inserting the words “or with any police force” after the word “commissioner” in the first line.

10. The said Act is amended by inserting, after section 51, the following sections:

“51.1. The members of the staff of the commissioner or of the police force shall assist any person who requires assistance in lodging a complaint.

They shall, in particular, assist the complainant in identifying the necessary or relevant evidence required to substantiate the complaint. They shall see that the documents and evidence collected by the complainant are secured. They shall provide the complainant with a copy of the complaint and with a list of the documents and evidence collected.

They shall also inform the complainant that every complaint regarding police ethics is dealt with through a conciliation procedure except if the complainant gives written notice to the commissioner of his refusal to submit to the conciliation procedure, with reasons, within 30 days of the complaint.

“51.2. The person who receives the complaint shall, within five days of receipt, forward a copy of the complaint to the commissioner and to the director of the police force concerned, together with a copy of the evidence collected.

“51.3. Within 30 days of receipt of a complaint or of identification of the police officer concerned, the commissioner shall, after making a preliminary analysis of the complaint,

(1) decide whether the complaint is to be dealt with under his authority;

(2) refer the complaint to the appropriate police force for the purposes of a criminal investigation if it appears to him that a criminal offence may have been committed;

(3) where applicable, designate the conciliator;

(4) inform the director of the police force concerned of his decision to refer the complaint to conciliation or to deal with it under his authority;

(5) notify the police officer concerned in writing of the substance of the complaint and of the facts enabling the event to which the complaint relates to be identified.

51.4. Every complaint relating to an event that in the opinion of the commissioner involves the public interest, particularly events in which death or serious bodily harm has occurred, situations potentially injurious to the public's confidence in police officers, criminal offences, repeat offences or other serious matters, shall be dealt with under his authority. Complaints which are clearly frivolous, trivial or vexatious and complaints in respect of which the complainant has given a written notice to the commissioner of his refusal to submit to the conciliation procedure, with reasons, shall also be dealt with under the commissioner's authority.

51.5. Every complaint regarding police ethics shall be referred to conciliation, except where the complaint is to be dealt with under the commissioner's authority."

11. Section 52 of the said Act is replaced by the following section:

52. The right to lodge a complaint regarding police ethics is prescribed one year after the date on which the event to which the complaint relates occurred."

12. Section 53 of the said Act is amended by inserting the words ", is dismissed or retires" after the word "resigns" in the first line.

13. Section 54 of the said Act is repealed.

14. Section 57 of the said Act is repealed.

15. Section 58 of the said Act is replaced by the following sections:

58. The commissioner shall designate conciliators, for each of the administrative regions of Québec, for complaints regarding police ethics; such persons must not be, nor have been, police officers.

58.1. The fees and expenses of conciliators shall be borne by the employer of the police officer concerned by the complaint in accordance with the rates established by the Minister.

“58.2. The object of the conciliation procedure is to resolve the complaint lodged against one or more police officers through a settlement accepted by both parties.

“58.3. During the conciliation proceedings, neither the complainant nor the police officer may be accompanied. However, the conciliator may, if he considers it necessary, allow the plaintive to be accompanied.

The presence of the police officer and of the complainant is mandatory. The conciliation proceedings take place in the presence of both parties ; however, the conciliator may meet separately with each party in order to arrive at a settlement.

“58.4. As soon as the conciliator concludes that the conciliation procedure will not lead to a settlement, he shall report to the commissioner, and the file shall be returned to the commissioner to be dealt with under his authority.

“58.5. The conciliation proceedings must be completed within 45 days from the date on which the commissioner refers the complaint to conciliation. The commissioner may authorize and fix the terms and conditions of any extension.

“58.6. The commissioner may terminate the conciliation proceedings if in his opinion it is in the public interest to do. In such a case, the complaint shall be returned to the commissioner to be dealt with under his authority.

“58.7. Despite an unsuccessful attempt at conciliation, if the commissioner is of the opinion that settlement of the complaint is possible and if the police officer and the complainant consent, the commissioner may return the complaint to conciliation.”

16. Section 62 of the said Act is amended by adding, at the end, the following sentence: “The holding of an investigation shall not prevent the conciliation procedure from being resumed if the parties consent.”

17. Section 65 of the said Act is amended by replacing paragraph 2 by the following paragraph :

“(2) the complainant without valid reasons refuses to participate in the conciliation procedure or refuses to cooperate in the investigation;”.

18. Section 66 of the said Act is amended

(1) by inserting the words “, the director of the police force concerned” after the word “complainant” in the second line ;

(2) by replacing the words “submit the decision to review by the Comité de déontologie policière” in the fourth and fifth lines by the words “obtain a

review of the decision by submitting new facts or elements to the commissioner, within 15 days. The commissioner shall make his decision upon the review within ten days and the decision is final.”

19. Section 67 of the said Act is amended by replacing the words “conduct the investigation or entrust it to the police force to which the police officer whose conduct is the subject-matter of the complaint belongs or to any other police force” in the second, third, fourth and fifth lines of the first paragraph by the words “order the holding of an investigation”.

20. Section 68 of the said Act is replaced by the following sections:

“**68.** Within 15 days of his decision to hold an investigation, the commissioner shall designate a person to act as the investigator.

An investigator may not be assigned to a file involving the police force to which he belongs or has belonged, except where the commissioner is satisfied that exceptional circumstances so warrant.

“**68.1.** The investigator shall report to the commissioner on the progress of his investigation at the times fixed by the commissioner.

“**68.2.** The fees and expenses of the investigators shall be borne by the employer of the police officer concerned by the investigation in accordance with the rates established by the Minister.”

21. Section 69 of the said Act is repealed.

22. Section 72 of the said Act is amended by replacing the word “monthly” in the second line by the words “as needed”.

23. The said Act is amended by inserting, after section 72, the following section:

“**72.1.** The investigation report shall be submitted to the commissioner within three months, except where the commissioner is satisfied that exceptional circumstances warrant otherwise.”

24. Section 73 of the said Act is replaced by the following section:

“**73.** The commissioner may, on receiving the investigation report, order a supplementary investigation to be conducted within the time and in the manner he determines.”

25. Section 74 of the said Act is amended

(1) by striking out the words “, or that the evidence is clearly insufficient” in the second line of subparagraph 1 of the first paragraph;

(2) by replacing the word “complaint” in the second line of subparagraph 2 of the first paragraph by the word “evidence”.

26. Section 76 of the said Act is amended

(1) by striking out the words “section 65 or” in the second line of the first paragraph;

(2) by replacing the words “division concerned of the Comité de déontologie policière referred to in subparagraph 1 of the first paragraph of section 107.1” in the first, second and third lines of the second paragraph by the words “ethics committee”.

27. Section 80 of the said Act is amended by replacing the second paragraph by the following paragraph:

“Where the ethics committee quashes a decision, it may order the commissioner to hold a new investigation, to resume the investigation within the time it indicates or to cite the police officer to appear before it within 15 days of its decision.”

28. Section 91 of the said Act is repealed.

29. Section 92 of the said Act is amended by replacing the second and third paragraphs by the following paragraph:

“The ethics committee may hold sittings anywhere in Québec.”

30. Section 94 of the said Act is replaced by the following section:

“**94.** The ethics committee shall be composed of advocates who have been members of the Bar for not less than ten years in the case of full-time members, and for not less than five years in the case of part-time members.”

31. Section 95 of the said Act is amended by replacing the first paragraph by the following paragraphs:

“**95.** The Government shall appoint not more than four full-time members to the police ethics committee for a fixed term of not more than five years. Their term may be renewed.

The Government shall also appoint part-time members for the same term, some of whom are to be members of a Native community if a complaint relates to a Native police officer. Their term may be renewed.”

32. Section 96 of the said Act is replaced by the following section:

“**96.** The Government shall designate a chairman and a vice-chairman from among the full-time members.”

- 33.** Sections 97, 100, 101 and 105 of the said Act are repealed.
- 34.** Section 106 of the said Act is amended by striking out the words “designated by the Government” in the second line of the first paragraph.
- 35.** Section 107 of the said Act is repealed.
- 36.** Section 107.1 of the said Act is replaced by the following section:
 “107.1. The sittings of the ethics committee are held by one member.”
- 37.** Section 107.2 of the said Act is repealed.
- 38.** Section 107.7 of the said Act is amended by replacing the word “a” after the word “chairman” in the second line by the word “the”.
- 39.** Section 111 of the said Act is amended by adding, at the end, the following sentence: “The citation shall contain as many counts as there are alleged transgressions.”
- 40.** Section 115 of the said Act is amended by replacing the words “vice-chairman appointed to the division concerned” in the first and second lines by the word “chairman”.
- 41.** Section 128 of the said Act is repealed.
- 42.** Section 130 of the said Act is amended
- (1) by replacing the words “one of the following penalties on the police officer” in the third and fourth lines by the words “on the police officer, for each count, one of the following penalties which may, where applicable, be consecutive”;
- (2) by inserting, after paragraph 2, the following paragraph:
 “(2.1) a rebuke;”;
- (3) by inserting, after paragraph 4, the following paragraph:
 “(4.1) disqualification as a peace officer for a period not exceeding five years;”.
- 43.** Section 131 of the said Act is amended by inserting the words “and other benefits attaching to the position that” after the word “salary” in the fifth line of the second paragraph.
- 44.** Section 132 of the said Act is amended by inserting the words “, on the director of the police force or employer concerned” after the word “parties” in the third line.

45. Section 134 of the said Act is amended by adding, after the second paragraph, the following paragraph :

“The director of the police force or the employer shall inform the commissioner of the imposition of the penalty decided by the ethics committee.”

46. The said Act is amended by inserting, after section 141, the following section :

“141.1. A judge of the Court of Québec may, on a motion served and filed at the clerk’s office within 10 days after service of the motion of appeal, summarily dismiss an appeal he deems improper or dilatory, or subject it to the conditions he determines.

The matter may also be raised, on the initiative of the Court, at the hearing it holds on the appeal.”

47. Sections 268 and 268.1 of the said Act are repealed.

POLICE ACT

48. Schedule A to the Police Act (R.S.Q., chapter P-13) is amended by inserting the words “and in accordance with the Code of ethics of Québec police officers,” after the words “honestly and justly” in the third line.

TRANSITIONAL AND FINAL PROVISIONS

49. This Act applies to any complaint regarding police ethics received by the commissioner before (*insert here the date of assent to this Act*). The commissioner may refer the complaint to conciliation if he considers it advisable to do so.

50. Every complaint regarding police ethics that gave rise to a citation before the ethics committee and in respect of which a hearing has commenced before (*insert here the date of assent to this Act*) shall continue to be dealt with in accordance with the provisions of the Act respecting police organization, as they read on (*insert here the date immediately preceding the date of assent to this Act*).

51. Prescription under the terms of section 52 of the Act respecting police organization as amended by section 11 of this Act applies to any event that occurred before (*insert here the date of assent to this Act*) except if the period of time left to run is less than one year, that period applies.

52. The term of office of the deputy police ethics commissioners shall terminate on (*insert here the date of assent to this Act*).

53. The term of office of the members of the police ethics committee terminates on (*insert here the date of assent to this Act*) except the term of

office of committee members who have been members of the Barreau for at least ten years which shall continue until the date of expiry.

The second paragraph of section 95 of the Act continues to apply to the members of the ethics committee whose term has terminated.

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