

NATIONAL ASSEMBLY

SECOND SESSION

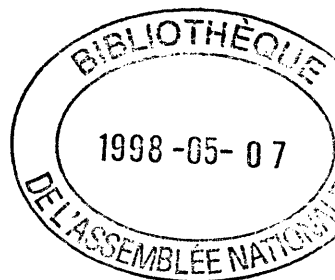
THIRTY-FIFTH LEGISLATURE

Bill 422

**An Act to amend the Act respecting
municipal courts and the Courts of
Justice Act**

Introduction

**Introduced by
Mr Serge Ménard
Minister of Justice**



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EXPLANATORY NOTES

This bill amends the Act respecting municipal courts and the Courts of Justice Act to allow for the creation of the office of chief judge of the municipal courts. The chief judge of the municipal courts is to be appointed by the Government from among municipal judges for a non-renewable term of seven years. The functions of the chief judge will include designating acting and deputy judges, formulating general policies for municipal courts in collaboration with municipal judges, seeing to the adoption of uniform rules of practice necessary to the exercise of the jurisdiction of the municipal courts, and ensuring compliance with judicial ethics.

In addition, the rules applicable to the office of municipal judge in the event that the municipal court is abolished are defined in the bill.

Lastly, the bill proposes various technical amendments that concern the administration of the Act respecting municipal courts. These amendments include authorizing a regional county municipality to enter into an agreement or become a party to an existing agreement pertaining to a municipal court which has jurisdiction in a contiguous territory. As well, municipalities may agree on common locations, other than the chief-place, in which the municipal court is to sit. The bill also clarifies the legislative provisions that relate to the consequences of an abolition of a municipal court or the withdrawal of a territory of a municipality from the jurisdiction of a municipal court.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting municipal courts (R.S.Q., chapter C-72.01);
- Courts of Justice Act (R.S.Q., chapter T-16).

Bill 422

AN ACT TO AMEND THE ACT RESPECTING MUNICIPAL COURTS AND THE COURTS OF JUSTICE ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 11.1 of the Act respecting municipal courts (R.S.Q., chapter C-72.01) is amended by inserting, after the third paragraph, the following :

“The provisions of this section also apply to a regional county municipality that, for the purposes of its jurisdiction, wishes to enter into an agreement with a contiguous local municipality or regional county municipality or to become a party to an existing agreement.”

2. Section 12 of the said Act is amended

(1) by replacing paragraph 3 by the following :

“(3) the address of the place where the court is to sit for matters relating to one or to two or more municipalities;”;

(2) by striking out paragraph 7.

3. Section 18.2 of the said Act is amended by striking out “or” at the end of subparagraph 1 of the first paragraph and by inserting, after subparagraph 2 of the first paragraph, the following :

“(3) the common municipal court which, at the time the joint application for the amalgamation of municipal territories is filed under section 85 of the said Act, has jurisdiction over the territory of the municipalities party to the joint application for amalgamation, provided that the only change that results from the amalgamation consists in replacing the names of the municipalities by the name of the new municipality resulting from the amalgamation.”

4. Section 23 of the said Act is amended by adding, at the end of the first paragraph, the following: “The Minister of Justice shall give notice of such approval to the chief judge of the municipal courts.”

5. Section 36 of the said Act is amended by inserting “the chief judge of the municipal courts or” after “before” in the first line of the second paragraph.

6. The said Act is amended by inserting, after section 36, the following :

“36.1. The Government shall appoint the chief judge of the municipal courts, by commission under the Great Seal, from among the municipal judges.

“36.2. The term of office of the chief judge is of seven years and cannot be renewed.

Notwithstanding the expiry of that term, the chief judge shall remain in office until a successor is appointed.

“36.3. The chief judge shall continue to exercise the functions of a municipal judge while holding the office of chief judge.

The chief judge shall exercise the functions of chief judge at the court to which the chief judge is assigned in the chief judge’s deed of appointment as a municipal judge or at any other place determined by the Government.

If the municipal court to which the chief judge is assigned is abolished, the chief judge shall continue to exercise the functions of chief judge at the place determined by the Government. For that purpose, the chief judge shall retain the status of municipal judge.

“36.4. If the chief judge is absent or unable to act, the chief judge may be replaced by another municipal judge appointed by the Government to exercise the functions of chief judge until the chief judge resumes the functions of chief judge or is replaced.

If, however, the chief judge is absent or unable to act for fewer than 45 days, the chief judge shall designate from among the municipal judges a judge to exercise the functions of chief judge until the chief judge resumes the functions of chief judge.

“36.5. The functions of the chief judge shall be, in particular,

(1) to establish, concurrently with the municipal judges, the general policies of the municipal courts and to ensure that they are adhered to;

(2) to see that such uniform rules of practice as are necessary for the exercise of the jurisdiction of the municipal courts are adopted and to ensure that the rules are applied;

(3) to ensure that judicial ethics are observed;

(4) to promote the professional development of municipal judges in collaboration with the Conseil de la magistrature established by the Courts of Justice Act;

(5) to provide support to municipal judges in their efforts to improve the operation of the municipal courts;

(6) to represent municipal judges before the relevant authorities or bodies.”

7. The said Act is amended by inserting, after section 37, the following:

“37.1. Notwithstanding section 37, the chief judge shall exercise no functions other than those of chief judge or of a municipal judge. However, the chief judge may carry out any mandate entrusted to the chief judge by order of the Government.

The second paragraph of section 129 of the Courts of Justice Act applies to the exercise of such functions.

The provisions of this section do not apply to the chief judge appointed or designated under section 36.4.”

8. The said Act is amended by inserting, after section 39, the following:

“39.1. Notwithstanding section 39, a judge of a municipal court that has been abolished who has not been appointed to another municipal court shall retain the status of municipal judge solely for the purpose of sitting as an acting judge pursuant to section 41 or 42 or as a deputy judge pursuant to section 46 on the court to which the judge had been designated before abolition. Failing such a designation, the chief judge, having regard to the requirements of the proper administration of justice and of the efficient management of the public funds allocated therefor, shall, by preference, designate the judge as an acting or deputy judge to a municipal court. The chief judge may not revoke the designation of a deputy judge until the judge is appointed to another municipal court.

“39.2. A judge of a municipal court that has been abolished and who has not been appointed to another court may, following the publication of a notice of vacancy on a municipal court and within the time provided therein, apply for the position. Where that is the case, the selection committee formed pursuant to section 34 is required, without further formality, to recognize the judge’s qualification for appointment as a municipal judge. The recognition of qualification shall be effective until the judge concerned is appointed to another municipal court.

“39.3. The Government shall give preference to an application submitted by a judge recognized to be qualified pursuant to section 39.2 for any office of municipal judge that the Government intends to fill pursuant to section 32 for which the judge shows an interest within the time provided in the notice of vacancy.”

9. Section 41 of the said Act is amended

(1) by replacing “Minister of Justice” in the first line of the first paragraph by “chief judge”;

(2) by striking out “, by order,” in the second line of the first paragraph;

(3) by replacing “The order” in the second paragraph by “Notice of the designation”.

10. Section 42 of the said Act is amended

(1) by inserting “and the chief judge” after “Justice” in the third line of the first paragraph;

(2) by striking out “, by order,” in the fourth line of the first paragraph;

(3) by replacing “The order” in the second paragraph by “Notice of the designation”.

11. The said Act is amended by inserting, after section 42, the following:

“**42.1.** The chief judge shall designate an acting judge pursuant to section 41 or 42 having regard to the requirements of the proper administration of justice and of the efficient management of the public funds allocated therefor.”

12. Sections 46 and 47 of the said Act are replaced by the following:

“**46.** The chief judge shall designate, from among the judges of the other municipal courts, a deputy judge for each municipal court. The deputy judge shall act if the judge assigned to the court or the deputy judge, as the case may be, recuses himself or is absent or unable to act.

In designating a deputy judge, the chief judge shall have regard to the requirements of the proper administration of justice and of the efficient management of the public funds allocated therefor.”

13. Section 48 of the said Act is replaced by the following:

“**48.** A deputy judge has all the rights, powers and privileges of the judge replaced by the deputy judge and shall exercise the functions of that judge from the time of designation until the designation is revoked by the chief judge.

A copy of the designation and, where applicable, of its revocation must be filed at the office of the court and transmitted to the Minister.”

14. The said Act is amended by inserting, after section 49, the following:

“**49.1.** The Government shall fix, by order, the additional remuneration attached to the office of chief judge which shall not be less than the salary and additional remuneration of an associate chief judge of the Court of Québec.

However, the additional remuneration of the chief judge shall be reduced by the amount of remuneration received as a judge by the chief judge pursuant to section 49.

The Government shall also fix, by order, the additional remuneration to which a judge appointed under the first paragraph of section 36.4 is entitled to replace the chief judge when the chief judge is absent or unable to act.

“49.2. The Government shall determine, by order, the cases in which, the conditions upon which and the extent to which it shall reimburse the chief judge for expenses incurred in the exercise of the chief judge’s functions.

[[**“49.3.** The sums required for the carrying out of sections 49.1 and 49.2 are taken out of the consolidated revenue fund.”]]

15. Section 50 of the said Act, enacted by section 8 of chapter 84 of the statutes of 1997, is amended by inserting “, 49.1 or 49.2” after “49”.

16. Section 51 of the said Act is amended by inserting “, 49.1 or 49.2” after “49” in the first line.

17. Section 55 of the said Act is replaced by the following:

“55. The court shall sit at its chief-place. In the case of a common municipal court, the court may also, in respect of matters relating to the territory of one or more municipalities situated in a territory other than that in which the chief-place is situated, sit in the territory of one of those municipalities. In such a case, the municipalities must determine, in the agreement concerning the court, the place where the court will sit for matters relating to their respective territories.”

18. The said Act is amended by inserting, after section 56, the following:

“DIVISION I.1

“GENERAL POLICIES AND RULES OF PRACTICE

“56.1. A majority of the municipal judges may, at a meeting called for that purpose by the chief judge or using any other method allowing the chief judge to consult with them, adopt the general policies of the municipal courts. The general policies must be compatible with the provisions of this Act.

“56.2. A majority of the municipal judges may, in the manner provided in section 56.1, adopt such uniform rules of practice applicable to all municipal courts as are necessary for the exercise of their jurisdiction.

The rules of practice must be compatible with the provisions of this Act and the provisions of the Code of Civil Procedure (chapter C-25) and the Code of Penal Procedure (chapter C-25.1).

The rules of practice are submitted to the Government for approval, and come into force on the fifteenth day following the date of their publication in the *Gazette officielle du Québec*.

The rules of practice must be posted in the office of each municipal court.”

19. Section 64 of the said Act is amended by inserting “the chief judge and” after “court to” in the first sentence.

20. Section 66 of the said Act is amended by replacing “unable to exercise their functions by reason of absence or illness” in the third and fourth lines of the first paragraph by “absent or unable to act”.

21. The said Act is amended by inserting, after section 86, the following :

“**86.1.** The administrative support expenses attached to the office of chief judge shall be borne by the municipality responsible for the administration of the court to which the chief judge is assigned.

The Government shall reimburse the administrative support expenses to the municipality to the extent that the Government determines by order.

Where the chief judge exercises the functions of chief judge elsewhere than at the municipal court to which the chief judge is assigned, the administrative support expenses shall be borne by the Government.

An order under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date fixed therein.”

22. Section 89 of the said Act is amended by inserting “the chief judge and” after the word “notify” in the first line of the second paragraph.

23. Section 90 of the said Act is amended by inserting “and the chief judge” after “prosecutor” in the third line of the second paragraph.

24. Section 91 of the said Act is amended by inserting “the chief judge and” after “notify” in the second line.

25. Section 95 of the said Act is amended by inserting “and the chief judge” after “Justice” in the third line.

26. Section 96 of the said Act is amended by adding, at the end, the following: “The Minister of Justice shall give notice of the suspension to the chief judge.”

27. Section 99 of the said Act is amended by inserting “and to the chief judge” after “concerned” in the second line of the second paragraph.

28. Section 104 of the said Act is amended by adding, at the end of the first paragraph, the following: “The Minister of Justice shall give notice of the lifting of the suspension to the chief judge.”

29. Section 111 of the said Act is amended

(1) by replacing subparagraph 3 of the first paragraph by the following:

“(2.1) that the conditions of withdrawal set forth in the agreement establishing the court are respected;

“(3) that, following the abolition of the court, the provisions of the agreement that relate to the apportionment of the assets and liabilities resulting from the application of the agreement will be complied with;”;

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

“The by-law comes into force on the fifteenth day following the date of publication of the order of approval in the *Gazette officielle du Québec*.”

30. Section 112 of the said Act is amended by inserting “and to the chief judge” after “concerned” in the second line of the second paragraph.

31. Section 114 of the said Act is amended by adding, at the end, the following: “The Minister of Justice shall give notice of the abolition to the chief judge.”

32. Section 115 of the said Act is amended

(1) by replacing “The conditions of revocation provided in the agreement to establish the court shall apply” in the first and second lines by “The apportionment of assets and liabilities resulting from the application of the agreement where the court is abolished and provided for in the agreement establishing the court shall apply”;

(2) by replacing “and the conditions” in the second line by “. The conditions”.

33. Section 117.2 of the said Act is amended by inserting, after the second paragraph, the following:

“Where, following the abolition of its municipal court or the withdrawal of its territory from the jurisdiction of a municipal court, a municipality becomes a party to an agreement relating to an existing municipal court, the provisions of the second paragraph, adapted as required, apply.”

34. Section 117.3 of the said Act is amended by replacing subparagraph 3 of the first paragraph by the following:

“(3) from the date on which the order establishing a municipal court or the order pertaining to a municipality becoming a party to an agreement relating to an existing municipal court becomes effective, by the collector designated for that court.”

35. Section 117.4 of the said Act is amended by replacing paragraph 3 by the following:

“(3) from the date on which the order establishing a municipal court or the order pertaining to a municipality becoming a party to an agreement relating to an existing municipal court becomes effective, before that court.”

36. The Courts of Justice Act (R.S.Q., chapter T-16) is amended by inserting, after section 88, the following:

“88.1. A municipal judge to whom the Act respecting municipal courts (chapter C-72.01) applies who has held office as chief judge of the municipal courts for seven years may, following the publication of a notice of vacancy on the Court of Québec or on the municipal court of Laval, Montréal or Québec and within the time provided therein, apply for the position. Where that is the case, the selection committee formed pursuant to section 88 is required, without further formality, to declare the judge qualified for appointment as a judge of such a court. The declaration of qualification shall be effective until the judge concerned is appointed to such a court.

The Government shall consider any application submitted by that judge for any vacant position on such a court, provided that, following the publication of a notice of vacancy, the judge shows an interest for the position within the time provided in the notice.”

37. Section 246.31 of the said Act, enacted by section 5 of chapter 84 of the statutes of 1997, is amended

(1) by inserting “the chief judge of the municipal courts,” after “Québec,” in the second line of the second paragraph;

(2) by replacing “by” in subparagraph 2 of the third paragraph by “, by mutual agreement, by the chief judge of the municipal courts and”;

(3) by inserting “the chief judge of the municipal courts,” after “Québec,” in the third line of subparagraph 4 of the third paragraph;

(4) by inserting “, the chief judge of the municipal courts” after “Québec” in the sixth line of subparagraph 4 of the third paragraph.

38. Section 246.36 of the said Act, enacted by section 5 of chapter 84 of the statutes of 1997, is amended by inserting “the chief judge of the municipal courts,” after “Québec,” in the third line of the third paragraph.

39. Section 246.41 of the said Act, enacted by section 5 of chapter 84 of the statutes of 1997, is amended by inserting “the chief judge of the municipal courts or” after “from” in the third line of the first paragraph.

40. Section 248 of the said Act is amended by replacing paragraph *f* by the following:

“(f) the chief judge of the municipal courts;”.

41. Section 249 of the said Act is amended by replacing “*d to h*” in the second line of the first paragraph by “*d to e, g and h*”.

42. Section 262 of the said Act is amended by adding, at the end of the second paragraph, the following: “The code may also indicate the functions or activities that the chief judge of the municipal courts may exercise without remuneration notwithstanding section 37.1 of the Act respecting municipal courts.”

TRANSITIONAL AND FINAL PROVISIONS

43. Every condition of revocation contained in an agreement entered into before (*insert here the date of coming into force of this section*) under paragraph 7 of section 12 of the Act respecting municipal courts is deemed not written.

44. The designation of acting judges or deputy judges pursuant to any of sections 41, 42, 46 and 47, as they read before the coming into force of this section, is deemed to have been made in accordance with the new legislation.

45. The term of office of the member of the Conseil de la magistrature appointed under paragraph *f* of section 248 of the Courts of Justice Act, in office on (*insert here the date preceding the date of coming into force of this section*), terminates upon the appointment of the chief judge of the municipal courts, appointed in accordance with section 36.1 of the Act respecting municipal courts, enacted by section 6 of this Act.

46. The provisions of this Act come into force on the date or dates to be fixed by order of the Government, except the provisions of sections 1 to 3, 17, 20, 29, 32 to 35 and 43 which come into force on (*insert here the date of assent to this Act*).