

NATIONAL ASSEMBLY

SECOND SESSION

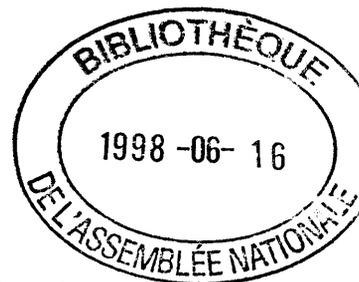
THIRTY-FIFTH LEGISLATURE

Bill 451

An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector and other legislative provisions

Introduction

**Introduced by
Mr André Boisclair
Minister of Relations with the Citizens and Immigration**



Québec Official Publisher
1998

EXPLANATORY NOTES

The main object of this bill is to amend the Act respecting Access to documents held by public bodies and the Protection of personal information and the Act respecting the protection of personal information in the private sector in order to introduce various measures which follow from the five-year report on the implementation of those Acts.

To that end, the bill broadens the scope of the Act respecting Access to documents held by public bodies and the Protection of personal information by making professional orders governed by the Professional Code subject to its provisions and by extending the meaning of the term “municipal body”.

As regards access to documents held by public bodies, the bill proposes special conditions to facilitate access to documents by handicapped persons and to adapt the access procedure as concerns documents that are distributed in computerized form only. In addition, the bill introduces a right of access to the decisions of the Government and the Conseil du trésor after the expiry of a period of 25 years while ensuring protection of information relating to government budgetary policy. The access procedure is also modified to provide for a uniform thirty-day reply period and to allow third persons concerned by an application for access to be notified by public notice.

With respect to the protection of personal information, the bill determines the form and nature of the consent to be given by a person to permit the release or use of personal information concerning that person, restricts the release of computerized public information files, and creates new obligations in relation to security measures to preserve the confidentiality of personal information. The enforcement of the provisions respecting the protection of personal information held by a public body is strengthened by the addition of a provision prohibiting the use of information for any purpose not relevant to that for which it is collected and by the addition of the obligation to inform the Commission d'accès à l'information where the communication of personal information is necessary for the carrying out of an Act in Québec. The bill also specifies the content of any agreement relating to the exchange of

personal information between public bodies and the particulars that may be considered by the Commission before approving such an agreement. The Commission must give its opinion within sixty days and, if the opinion of the Commission is unfavourable, the Government will be obliged to publish the agreement before approving it. Any comparison of personal information files is subject to the authorization of the Commission or the Government, and guidelines are established in respect of the effect of decisions made following a comparison of computerized files. As regards the management of personal information files, the bill proposes to require, instead of the keeping of a register to record the release of personal information, the sending of a notice to the Commission upon the release of such information, and to require, instead of the declaration of files to the Commission, the keeping by public bodies of a running inventory of files which will be accessible to every person and be transmitted to the Commission where necessary. In addition, the bill adjusts the provisions relating to the right of access of the persons concerned by personal information and their representatives in order to facilitate the exercise of such right.

The bill proposes various measures to improve the organization of the Commission and, in particular, to enable a member acting alone to exercise the powers of investigation conferred on the Commission, to enable a member who has been replaced to continue to exercise his or her functions in respect of matters already begun to be heard, to further specify the Commission's powers of investigation and to increase the Commission's powers with respect to orders. However, any order made following an investigation may henceforth be appealed from before the Court of Québec. In addition, the bill specifically entrusts the Commission with the examination of the impact of the use of various technologies. The Commission is also empowered to designate a mediator for the settlement of disputes. The appeal procedure in the Court of Québec is simplified by removal of the requirement to apply for leave to appeal.

Penal provisions are amended to change the liability regime applicable in respect of offences under the Act and to increase the fines in respect of the protection of personal information to the level of the fines under the Act respecting the protection of personal information in the private sector.

Lastly, the bill extends the scope of the five-year report the Commission must produce under the Act. The report will also deal with legislative provisions found to be contrary to the Act respecting Access to documents held by public bodies and the Protection of

personal information or to the Act respecting the protection of personal information in the private sector, and with the impact of technology.

The bill also proposes technical, consequential and harmonizing amendments, in particular, to replace the concept of nominative information by that of personal information and to adjust the concept of mandate in relation to contracts for services and contracts of enterprise.

The bill also introduces various measures in the Act respecting the protection of personal information in the private sector.

As regards the confidentiality of personal information, in addition to minor adjustments for harmonization or clarification purposes, the bill provides for a new obligation relating to security measures to preserve confidentiality, extends the exception applicable to the recovery of debts owed to an enterprise and authorizes the transfer of files containing personal information to an accredited private archival agency, while regulating the consultation of such files for research purposes. It also allows enterprises to communicate information considered to be public information under the Act without the consent of the person concerned.

As regards access to personal information by the person concerned, a person who refuses access thereto must, in future, give reasons for the decision which are based on the Act. In the case of information concerning a third person, it will no longer be necessary, in order to refuse access thereto, to show that disclosure may be prejudicial to the third person.

To facilitate the carrying out of the Act, penal provisions are clarified and a new offence relating to personal information agents will be sanctioned under the Act.

Lastly, technical, consequential and harmonizing amendments to the Act respecting the protection of personal information in the private sector are proposed for the purpose of concordance with the Act respecting Access to documents held by public bodies and the Protection of personal information, in particular with respect to mediation and the dispute examination procedure, the removal of the obligation to apply for leave to appeal to the Court of Québec and the exercise of the Commission's powers of investigation by a member acting alone.

In addition, the Archives Act is amended to allow documents that may contain personal information to be used for research while protecting the confidentiality of the information. An amendment to the Environment Quality Act is also proposed to allow access to documents referred to in the register kept by the Minister of the Environment.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1);
- Financial Administration Act (R.S.Q., chapter A-6);
- Archives Act (R.S.Q., chapter A-21.1);
- Building Act (R.S.Q., chapter B-1.1);
- Highway Safety Code (R.S.Q., chapter C-24.2);
- Public Curator Act (R.S.Q., chapter C-81);
- Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2);
- Act respecting school elections (R.S.Q., chapter E-2.3);
- Election Act (R.S.Q., chapter E-3.3);
- Act to establish the permanent list of electors (R.S.Q., chapter E-12.2);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Act respecting the protection of personal information in the private sector (R.S.Q., chapter P-39.1);
- Environment Quality Act (R.S.Q., chapter Q-2);
- Act respecting the Régie de l'assurance-maladie du Québec (R.S.Q., chapter R-5);
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20);

- Act respecting income security (R.S.Q., chapter S-3.1.1);
- Act respecting health services and social services (R.S.Q., chapter S-4.2);
- Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5).

Bill 451

AN ACT TO AMEND THE ACT RESPECTING ACCESS TO DOCUMENTS HELD BY PUBLIC BODIES AND THE PROTECTION OF PERSONAL INFORMATION, THE ACT RESPECTING THE PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) is amended by inserting, after section 3, the following:

“3.1. For the purposes of this Act, professional orders governed by the Professional Code (chapter C-26) are considered to be public bodies.”

2. Section 5 of the said Act, amended by section 64 of chapter 41 of the statutes of 1997 and section 92 of chapter 44 of the statutes of 1997, is again amended by replacing paragraph 1 by the following:

“(1) a municipality, any body declared by law to be the mandatary or agent of a municipality, and any body whose board of directors includes at least one elected municipal officer and whose budget must be approved by one or more municipalities or more than one-half of the financing of which is assumed by one or more municipalities, except a private body;”

3. Section 10 of the said Act is amended by adding, at the end, the following:

“At the request of a handicapped person with a visual or hearing impairment, a document must be communicated to the person in an adapted form as prescribed by regulation.”

4. Section 13 of the said Act is amended by adding, at the end, the following:

“However, where a document is distributed in computerized form only, the applicant may obtain a written and intelligible transcript of the document. In such a case, the fees prescribed for the issue of a copy of a document may be charged to the applicant.”

5. Section 26 of the said Act is amended by inserting “life,” after “hazard to the” in the third line of the first paragraph.

6. Section 30 of the said Act is amended by adding, at the end, the following :

“However, decisions of the Conseil exécutif other than an order the publication of which is deferred and decisions of the Conseil du trésor shall be accessible at the expiry of a period of twenty-five years from their date.”

7. The said Act is amended by inserting, after section 30, the following :

“30.1. A public body may refuse to confirm the existence of or to disclose information if, as a result of its disclosure, government budgetary policy would be revealed before being made public by the Minister of Finance.”

8. Section 40 of the said Act is amended by inserting “, competence” after “aptitudes” in the second line.

9. Section 47 of the said Act is amended

(1) by replacing “twenty” in the first line of the first paragraph by “thirty”;

(2) by striking out “or,” at the end of subparagraph 5 of the first paragraph;

(3) by adding, after subparagraph 6 of the first paragraph, the following :

“(7) inform the applicant that the third person concerned by the application cannot be notified by mail and that an application for notification by public notice has been filed with the Commission.”;

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

“Where information is to be communicated in an adapted form to a handicapped person with a visual or hearing impairment, the person in charge of access to documents may determine the period within which the document will be made available in such form.”

10. Section 49 of the said Act is amended

(1) by replacing “twenty” in the second line of the first paragraph by “thirty”;

(2) by inserting, after the first paragraph, the following :

“Where the person in charge cannot notify a third person by mail, the person in charge may, within the thirty-day period, apply to a member of the Commission for authorization to give the required notice by public notice in a newspaper, on radio or television or otherwise, subject to the conditions determined by the member of the Commission. Where more than one notice is required, the notice is valid only after every notice has been issued, but it is deemed to have been given on the date of issue of the first notice.”;

(3) by inserting “or within twenty days of the date of the public notice” after “charge” in the second line of the second paragraph;

(4) by inserting, after the first sentence of the third paragraph, the following: “In the case of a public notice, the person in charge shall transmit the notice to any third person who has submitted written observations.”

11. Section 53 of the said Act is amended

(1) by replacing “Nominative” in the first line by “Personal”;

(2) by replacing paragraph 1 by the following:

“(1) where the person concerned by the information consents to its disclosure; in the case of a minor, consent may also be given by the person having parental authority;”.

12. The said Act is amended by inserting, after section 53, the following:

“53.1. Consent to the release or use of personal information must be manifest, free, and enlightened, and must be given for specific purposes. Such consent is valid only for the length of time needed to achieve the purposes for which it was requested.

Consent given otherwise than in accordance with the first paragraph is without effect.”

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

“55. Any information which, by law, is public information is not personal information for the purposes of this Chapter.

However, a public body that holds a register, an assessment roll or any other similar file containing information which, by law, is public information may only allow access to one item of such information at a time. The public body may not communicate such a file, unless the communication is necessary for the carrying out of an Act in Québec. In the latter case, the public body shall notify the Commission in accordance with section 67.”

14. Section 57 of the said Act is amended by adding, at the end, the following:

“Furthermore, the disclosure of information contemplated in subparagraph 3 of the first paragraph must not result in the disclosure of information the release of which may or must be refused under Division II of Chapter II.”

15. Section 59 of the said Act is amended

(1) by replacing “nominative” in the first line of the first paragraph by “personal”;

(2) by replacing “68.1” in the second line of subparagraph 8 of the second paragraph by “70.1”.

16. The said Act is amended by inserting, after section 62, the following:

“62.1. Every public body that collects, holds, uses or communicates personal information must develop and apply such security measures as are appropriate to preserve the confidentiality of the information.

It shall, more particularly, ensure that the confidentiality of personal information is preserved in its use of technology.”

17. Section 65 of the said Act is amended

(1) by replacing the first three lines of the first paragraph by the following:

“65. Every person who, on behalf of a public body, collects personal information from the person concerned or from a third person must identify himself or herself and, upon the first collection of information and, thereafter, on request, inform the person concerned or the third person”;

(2) by inserting, after the first paragraph, the following:

“The information referred to in subparagraphs 1 and 2 of the first paragraph must be indicated on every written communication for the purpose of collecting personal information subsequent to the first collection of information.”;

(3) by replacing “nominative” in the first line of the third paragraph by “personal”.

18. The said Act is amended by inserting, after section 66, the following:

“66.1. No public body may use personal information for any purposes not relevant to the purposes for which it is collected, unless the person concerned consents thereto or unless the use of such information is necessary for the carrying out of an Act in Québec. In the latter case, the public body shall notify the Commission.

The Commission may authorize a public body to use personal information, in the exercise of the public body’s powers and duties or the implementation of a program under its management, for purposes other than those for which it is collected.”

19. Section 67 of the said Act is amended

- (1) by replacing “nominative” in the second line by “personal”;
- (2) by adding, at the end, the following:

“The public body shall, within thirty days of the release of the information, transmit to the Commission a notice indicating

- (1) who released the information and who received it;
- (2) the nature or type of the information released;
- (3) the purposes for which the information was released;
- (4) the legislative provision making the release of the information necessary;
- (5) the security measures applied to preserve the confidentiality of the information.

The notice may also be transmitted by the public body having received the information.

In the case of recurrent releases of information of the same nature or type pursuant to the same legislative provision, the public body may transmit to the Commission a single notice in respect of such releases within ninety days of the first release.

Such notices shall be made accessible by the person in charge.

However, no notice is required where the release of information is requested by a person or a body to enter in the account of a member of a public body, of its board of directors or of its personnel an amount required by law to be withheld or paid.”

20. Section 67.2 of the said Act is amended

- (1) by replacing the first paragraph by the following:

“67.2. A public body may, without the consent of the person concerned, release personal information to any person or body if the information is necessary for the carrying out of a mandate or the performance of a contract for services or a contract of enterprise given to that person or body by the public body.”;

- (2) by replacing “entrust the duties by a mandate” in subparagraph 1 of the second paragraph by “give the mandate or contract”;

- (3) by replacing “the mandate” in the first line of subparagraph 2 of the second paragraph by “the mandate or the contract”;

(4) by inserting “or the performance of the contract” after “mandate” in the fourth line of subparagraph 2 of the second paragraph.

21. Sections 67.3 and 67.4 of the said Act are repealed.

22. Section 68 of the said Act is amended

(1) by replacing “nominative” in the second line of the first paragraph by “personal”;

(2) by inserting, after subparagraph 1 of the first paragraph, the following:

“(1.1) to a public body where the release is for the benefit of the person concerned;”;

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

“Any release of information under this section shall be made under the terms of a written agreement indicating

(1) the purposes for which the information is released;

(2) the nature or type of the information released;

(3) the means of communication used;

(4) the security measures applied to preserve the confidentiality of personal information;

(5) the frequency of such release;

(6) the means used to inform the persons concerned;

(7) the term of the agreement.”

23. Sections 68.1 and 69 of the said Act are repealed.

24. Section 70 of the said Act is amended

(1) by replacing the first two paragraphs by the following:

“**70.** An agreement entered into under section 68 must be submitted to the Commission for its opinion.

The Commission may take into consideration, among other factors,

(1) the conformity of the agreement with the objects referred to in section 68;

(2) the security measures to be applied to preserve the confidentiality of the information released;

(3) possible infringement upon the privacy of the persons concerned by the release of information;

(4) the reasons why the information is not required to be collected from the person concerned.

The agreement comes into force on the day a favourable opinion is issued by the Commission or, failing the issue of an opinion, on the sixtieth day after receipt of the agreement by the Commission or on any later date indicated in the agreement.

The Commission, on issuing an unfavourable opinion, must give reasons.

If the Commission issues an unfavourable opinion, the agreement may be submitted to the Government for approval. Before approving an agreement, the Government shall publish it in the *Gazette officielle du Québec* with a notice stating that the agreement may be approved by the Government at the expiry of a period of thirty days from the publication. The agreement comes into force on the day it is approved or on any later date fixed by the Government or indicated in the agreement.

In an emergency, the Government may approve an agreement without being required to publish a prior notice. The approval order shall explain the emergency.”;

(2) by replacing “such opinion and approval” in the third line of the third paragraph by “the coming into force of the agreement”.

25. The said Act is amended by inserting, after section 70, the following:

“70.1. No public body may, without the consent of the persons concerned, release a personal information file to a public body or a person requesting such release for the purpose of comparing the file with a file held by the public body or person, unless the public body or person has obtained authorization from the Commission or the Government.

The Commission may give the authorization on such conditions as it may fix.

The Commission may take into consideration, among other factors,

(1) the necessity of comparing the files for the exercise of the powers and duties of the public body or the implementation of a program under its management or for the performance of the duties of the person;

(2) the security measures to be applied to preserve the confidentiality of the information ;

(3) the measures to be applied to verify the accuracy of the results obtained before making a decision in respect of a person ;

(4) possible infringement upon the privacy of the persons concerned by the release of the information.

The Commission shall rule on the application for authorization within sixty days of its receipt. Failing such a ruling, the Commission is deemed to have given its authorization on the sixtieth day after receiving the application for authorization or on any later date indicated in the application.

The Commission, on issuing a refusal, must give reasons.

If the Commission issues a refusal, the Government may, on application, grant the authorization and fix the applicable conditions. Before granting the authorization, the Government shall publish the application for authorization, as well as any conditions it intends to fix in the *Gazette officielle du Québec*, together with a notice stating that the authorization may be granted by the Government at the expiry of a period of thirty days from the publication.

In an emergency, the Government may authorize the release of a file without being required to publish a prior notice. The authorization order shall explain the emergency.

The content of the application, whether authorization is given or deemed to have been given, as well as the Commission's refusal and the authorization of the Government, where applicable, shall be tabled in the National Assembly within thirty days of the authorization or of the date on which the authorization is deemed to have been given or, if the Assembly is not sitting, within thirty days of resumption.

In addition, the content of the authorization shall be published in the *Gazette officielle du Québec* within thirty days of being tabled in the National Assembly.

“70.2. A public body to which section 2 of the Act respecting administrative justice (1996, chapter 54) does not apply may not make a decision that is unfavourable to a person based solely on a comparison of computerized personal information files, unless the person concerned has had an opportunity to provide the public body with information useful for the making of its decision and, where necessary, to complete his or her file.”

26. Sections 76 and 77 of the said Act are replaced by the following :

“76. Every public body shall keep a running inventory of its personal information files.

The inventory shall contain

- (1) the name of each file, the type of information it contains, the use to which the information is to be put and the file management method;
- (2) the source of the information entered in each file;
- (3) the categories of persons concerned by the information entered in each file;
- (4) the categories of persons having access to each file in the performance of their duties;
- (5) the security measures applied to preserve the confidentiality of personal information and the measures applied to ensure that personal information is used for the purposes for which it was collected;
- (6) any other indication prescribed by government regulation.

The inventory shall be kept in accordance with the rules established by the Commission, where that is the case.

Every person has a right of access to the inventory upon an application to the person in charge of access to documents or the protection of personal information within the body.

“77. Where required by government order, a public body shall transmit to the Commission its personal information file inventory and any subsequent updating thereof.

Every public body shall also include a summary of the inventory in its annual report.”

27. Section 79 of the said Act is amended

- (1) by replacing “66 and 67.3” in the first line of the first paragraph by “66.1 and 68”;
- (2) by replacing “66, 67.3 and 67.4” in the first line of the second paragraph by “66.1”.

28. Section 84 of the said Act is amended

- (1) by replacing “nominative” in the first line of the first paragraph by “personal”;
- (2) by replacing “nominative” in the first line of the second paragraph by “personal”;
- (3) by adding, at the end, the following:

“At the request of a handicapped person with a visual or hearing impairment, information must be communicated to the person in an adapted form as prescribed by regulation.”

29. Section 85 of the said Act is amended

(1) by replacing “nominative” in the first line of the first paragraph by “personal”;

(2) by replacing “where a person may be exempt” in the second and third lines of the third paragraph by “in which a person, particularly a mobility-impaired handicapped person who is unable to consult the document on the premises, may be exempted”.

30. Section 88.1 of the said Act is amended

(1) by replacing “nominative” in the first line by “personal”;

(2) by inserting “or a death benefit under an Act applicable in Québec” after “insurance” in the second line;

(3) by replacing “or to the heir or successor of the person to whom the information relates” in the second and third lines by “, to the heir or successor of the person to whom the information relates or to a person subrogated in the rights of the deceased person”;

(4) by replacing “or successor” in the fifth line by “, successor or subrogated person”.

31. Section 89.1 of the said Act is amended

(1) by replacing “nominative” in the second line by “personal”;

(2) by inserting “or the death benefit under an Act applicable in Québec” after “insurance” in the second line;

(3) by replacing “or by the heir or successor of the person to whom the information relates” in the third and fourth lines by “, by the heir or successor of the person to whom the information relates or by a person subrogated in the rights of the deceased person”;

(4) by replacing “or successor” in the fifth line by “, successor or subrogated person”.

32. Section 93 of the said Act is amended by striking out, at the end, “pursuant to an agreement under this Act”.

33. Section 94 of the said Act is amended

(1) by inserting “a person subrogated in the rights of a deceased person,” after “that person,” in the third line of the first paragraph;

(2) by inserting “or a death benefit under an Act applicable in Québec” after “insurance” in the fourth line of the first paragraph.

34. Section 98 of the said Act is amended

(1) by replacing “twenty” in the second line of the first paragraph by “thirty”;

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

“Where the person in charge of access to documents communicates information in an adapted form to a handicapped person with a visual or hearing impairment, the person in charge may determine the period within which the document will be made available in such form.”

35. Section 105 of the said Act is amended

(1) by replacing “is” in the first line of the first paragraph by “shall be a fixed period of”;

(2) by adding, at the end, the following:

“Members who have been replaced may, with the authorization of and for the period determined by the chairman, continue to exercise their functions in respect of the applications for review or for examination of disputes that they have begun to hear but have yet to determine. This paragraph does not apply to members who have been dismissed.”

36. Section 108 of the said Act is amended by replacing “either of the two” in the fourth line by “any of the other”.

37. Section 114 of the said Act is amended by replacing “No extraordinary recourse provided for in articles 834 to 850” in the first line of the first paragraph by “Except on a question of jurisdiction, no proceedings under articles 33 and 834 to 846”.

38. Section 118 of the said Act is amended by striking out “designated” in the first line of the first paragraph.

39. Section 120 of the said Act is amended by striking out “designated” in the first line.

40. Section 123 of the said Act is amended

(1) by striking out “, and inquire into its effectiveness and degree of observance” in the first and second lines of paragraph 1;

(2) by striking out paragraph 4.

41. The said Act is amended by inserting, after section 123, the following:

“123.1. The functions of the Commission also include the examination of the impact of the use of technologies on the protection of personal information.

The Commission may submit a report to the Minister which the latter shall table in the National Assembly within thirty days after receiving it or, if the Assembly is not sitting, within thirty days of resumption.”

42. Section 126 of the said Act is amended

(1) by adding “or requests whose processing may seriously impede the operations of the body” at the end of the first paragraph;

(2) by striking out the third paragraph.

43. The said Act is amended by inserting, after section 126, the following:

“126.1. The Commission may, of its own initiative or following a complaint from an interested person, investigate any matter relating to access to a document held by a public body or the protection of personal information held by such a body.

“126.2. Following an investigation, the Commission may, after giving the public body an opportunity to submit observations, recommend or order the application of such corrective measures as are appropriate to ensure access to the documents held by the public body or the protection of the personal information held by the public body.”

44. The said Act is amended by inserting, after section 128.1, the following:

“128.2. Where the Commission is of the opinion, following an investigation, that the communication of personal information or files by a public body without the consent of the person concerned is not necessary for the carrying out of an Act in Québec, is not in conformity with the information exchange agreement or with the authorization to compare files, or is not carried out in conjunction with measures which adequately preserve the confidentiality of the information, the Commission may, after giving the public body an opportunity to submit written observations,

(1) order that the communication of the information or files cease or order that the person or body having received information delete the information from the file or destroy the information;

(2) order that the public body take any measures the Commission considers appropriate to ensure compliance with the law, an agreement or an authorization;

(3) order that any personal information or personal information file established or used contrary to this Act be destroyed;

(4) order that an agreement or authorization, other than an agreement approved or an authorization granted by the Government, be terminated or suspended.”

45. The said Act is amended by inserting, after section 129, the following :

“**129.1.** A member of the Commission may, on behalf of the Commission, act alone to exercise the powers conferred on the Commission by sections 126 to 128.2.”

46. Section 132 of the said Act is repealed.

47. Section 137 of the said Act is amended by adding, at the end, the following :

“Where a third person cannot be notified by mail, the Commission may notify the person by other means, including a public notice in a newspaper, on radio or television. Where more than one notice is given, the notice is valid only after every notice has been issued, but it is deemed to have been given on the date of issue of the first notice.”

48. The said Act is amended by adding, after section 138, the following :

“**138.1.** Where the Commission receives an application, it may direct a person it designates to attempt to bring the parties to an agreement.”

49. Section 141 of the said Act is amended

(1) by inserting “or any of its members” after “Commission” in the first line of the first paragraph;

(2) by replacing “any nominative information” in the third line of the second paragraph by “any personal information”;

(3) by replacing “release of nominative” in the third line of the second paragraph by “release of personal”.

50. Section 147 of the said Act is replaced by the following :

“**147.** Any person directly interested may, on any question of law or jurisdiction, bring an appeal before a judge of the Court of Québec from a final decision of the Commission, including an order made following an investigation, or, with leave of a judge of that Court, from an interlocutory decision that cannot be remedied by the final decision.”

51. Sections 149 to 151 of the said Act are replaced by the following:

“149. The appeal is brought by filing with the Court of Québec a notice of appeal specifying the questions of law or jurisdiction which ought to be examined in appeal and, in the case of an appeal from an interlocutory decision, specifying why it cannot be remedied by the final decision.

The notice of appeal shall be filed at the office of the Court of Québec, in Montréal or in Québec, at the option of the appellant, within thirty days of the date of receipt of the final decision by the parties or within ten days of the date of the contested interlocutory decision.

“150. The filing of the notice of appeal suspends the carrying out of the decision of the Commission until the decision of the Court is rendered. In the case of an appeal from a decision ordering a public body to cease or refrain from doing something, the filing of the notice does not suspend the carrying out of the decision.

“151. The notice of appeal shall be served on the other party and on the Commission within ten days of being filed at the office of the Court of Québec.

The secretary of the Commission shall send two copies of the decision appealed from and of the documents related to the contestation to the office of the Court, in place of the joint record.”

52. Section 155 of the said Act is amended

(1) by replacing “nominative” in the second line of subparagraph 1 of the first paragraph by “personal”;

(2) by inserting, after subparagraph 1 of the first paragraph, the following:

“(1.1) fixing the fees payable for any act performed by the Commission;”;

(3) by adding, at the end of subparagraph 2 of the first paragraph, “, in particular, in the case of a mobility-impaired handicapped person who is unable to consult the document on the premises”;

(4) by replacing “nominative” in the first line of subparagraph 4 of the first paragraph by “personal”;

(5) by adding “the inventory of” after “relation to” in the second line of subparagraph 6 of the first paragraph;

(6) by adding, after subparagraph 7 of the first paragraph, the following:

“(8) prescribing the cases or conditions requiring the communication of information in an adapted form to a handicapped person with a visual or

hearing impairment and determining the bodies or categories of bodies bound by the requirement;

“(9) determining, among the provisions of a regulation, those the violation of which constitutes an offence.”

53. Sections 156 and 157 of the said Act are repealed.

54. Section 158 of the said Act is amended by replacing “knowingly” in the first line by “, without a valid excuse,”.

55. Section 159 of the said Act is amended

(1) by replacing “knowingly” in the first line by “, without a valid excuse,”;

(2) by inserting “other than personal information” after “information” in the second line.

56. Section 159.1 of the said Act is amended by replacing “knowingly” in the first line by “, without a valid excuse,”.

57. Section 160 of the said Act is amended by striking out “knowingly” in the second line.

58. Section 161 of the said Act is amended by replacing “knowingly omitting” in the second line by “omitting, without a valid excuse,”.

59. Sections 162 and 163 of the said Act are replaced by the following:

“**162.** Every person who

(1) communicates to a person, contrary to section 55, a computerized information file containing public information where the communication of such a file is not necessary for the carrying out of an Act in Québec, or communicates such a file without notifying the Commission;

(2) releases, without the consent of the person concerned, personal information that cannot be released without the person’s consent under the provisions of section 59, 67, 67.1, 67.2 or 68,

(3) releases, otherwise than in accordance with section 60, personal information referred to therein,

(4) attempts to obtain personal information within a public body without being qualified to receive such information or despite the fact that the information is not necessary for the discharge of the person’s duties as is required under section 62,

(5) collects personal information on behalf of a public body otherwise than in accordance with the provisions of sections 64 to 66,

(6) uses, otherwise than in accordance with section 66.1, personal information for purposes that are not relevant to those for which the information was collected,

(7) collects, holds, uses or releases personal information without having developed or without applying such security measures as are appropriate to preserve the confidentiality of the information, as provided for in an agreement entered into pursuant to section 68 or an authorization referred to in section 70.1,

(8) communicates or receives, otherwise than in accordance with section 70.1, a personal information file for the purpose of comparing it with another file,

(9) fails to enter personal information in a personal information file or to destroy personal information in accordance with the provisions of sections 71 to 73,

(10) fails to keep a running inventory of personal information files or to inform the Commission of the security measures applied in accordance with section 76, or to transmit such an inventory or its updating to the Commission in accordance with section 77,

(11) contravenes an order of the Commission,

is guilty of an offence and is liable to a fine of \$1,000 to \$10,000 and, for any subsequent offence, to a fine of \$10,000 to \$20,000.

“163. Every person who contravenes any of the provisions of a regulation of the Government the violation of which constitutes an offence is guilty of an offence and is liable to the fine prescribed in section 159.”

60. Section 164 of the said Act is amended by striking out “, in accordance with article 10 of the Code of Penal Procedure (chapter C-25.1),” in the first and second lines.

61. Section 179 of the said Act is amended by inserting, after the first paragraph, the following:

“The Commission shall also report on legislative provisions that expressly state that they apply notwithstanding this Act and on the impact of technologies on the right to privacy.”

62. Schedule B to the said Act is amended by inserting “and impartiality” after “honesty” in the third line.

ACT RESPECTING THE PROTECTION OF PERSONAL
INFORMATION IN THE PRIVATE SECTOR

63. Section 10 of the Act respecting the protection of personal information in the private sector (R.S.Q., chapter P-39.1) is amended by adding, at the end, the following:

“The person shall, more particularly, ensure that the confidentiality of personal information is preserved in the person’s use of technology.”

64. Section 12 of the said Act is amended by striking out “, subject to the time limit prescribed by law or by a retention schedule established by government regulation” in the second, third and fourth lines.

65. Section 13 of the said Act is amended, in the French text, by inserting “ne” after “loi” in the fourth line.

66. Section 14 of the said Act is amended by inserting “collection,” after “Consent to the” in the first line of the first paragraph.

67. Section 18 of the said Act is amended

(1) by replacing subparagraph 4 of the first paragraph by the following:

“(4) to a person to whom it is necessary to communicate the information for the carrying out of an Act in Québec or for the carrying out of a collective agreement;”;

(2) by inserting “, or to a member of his personnel who recovers debts for the enterprise,” after “others” in the first line of subparagraph 9 of the first paragraph.

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

“18.1. A person carrying on an enterprise may, without the consent of the person concerned, communicate personal information contained in a file the person holds on another person to an accredited archival agency if the information is communicated in the course of a transfer or deposit of the enterprise’s archives.

A person carrying on an enterprise may also communicate such information to any person without the consent of the person concerned if the information is contained in a document that is more than 150 years old.

However, the information may be communicated, without the consent of the person concerned, to a person for research purposes before the expiry of 150 years provided the documents are not structured so as to be retrievable by reference to the name of a person or to a sign or symbol identifiable with a person and provided the processing of the documents is not automated. The

person to whom the information is communicated must preserve the confidentiality of personal information during the period in which it may not be communicated without the consent of the person concerned.

“18.2. A person carrying on an enterprise may, without the consent of the person concerned, communicate any information which, by law, is public information.”

69. Section 20 of the said Act is amended

(1) by inserting “or any party to a contract for services or a contract of enterprise” after “agents” in the second line;

(2) by replacing “execution of their mandates” in the fourth line by “carrying out of their mandates or contracts”.

70. Section 30 of the said Act is amended by replacing the last three lines by the following: “representative, heir or successor of that person, a person subrogated in the rights of the deceased person, the administrator of the succession, the beneficiary of life insurance or of a death benefit under an Act applicable in Québec or the person having parental authority.”

71. Section 32 of the said Act is amended by inserting “of receipt” after “date” in the third line of the first paragraph.

72. Section 34 of the said Act is amended by inserting “based on this Act” after “reasons” in the third line.

73. Section 40 of the said Act is amended by striking out “and the disclosure may seriously harm that third person” in the fourth and fifth lines.

74. Section 41 of the said Act is replaced by the following:

“41. Any person carrying on an enterprise who holds a file on another person must refuse to give communication of personal information to the administrator of the succession, the beneficiary of life insurance or of a death benefit under an Act applicable in Québec, the heir or the successor of the person concerned by the information or a person subrogated in the rights of a deceased person, unless the communication has a direct bearing on the interests or rights of the person requesting it in his or her capacity as administrator, subrogated person, beneficiary, heir or successor.”

75. Section 48 of the said Act is amended by striking out “and report to it on the result of the attempt within the time it determines” in the third and fourth lines.

76. Section 61 of the said Act is replaced by the following:

“61. Any person directly interested may, on any question of law or jurisdiction, bring an appeal before a judge of the Court of Québec from a final decision of the Commission or, with leave of a judge of that Court, from an interlocutory decision that cannot be remedied by the final decision.”

77. Sections 63 to 66 of the said Act are replaced by the following :

“63. The appeal is brought by filing with the Court of Québec a notice of appeal specifying the questions of law or jurisdiction which ought to be examined in appeal and, in the case of an appeal from an interlocutory decision, specifying why it cannot be remedied by the final decision.

The notice of appeal shall be filed at the office of the Court of Québec, in Montréal or in Québec, at the option of the appellant, within 30 days of the date of receipt of the final decision by the parties or within 10 days of the date of the contested interlocutory decision.

“64. The filing of the notice of appeal suspends the carrying out of the decision of the Commission until the decision of the Court of Québec is rendered. In the case of an appeal from a decision ordering a person to cease or refrain from doing something, the filing of the notice does not suspend the carrying out of the decision.

“65. The notice of appeal shall be served on the other party and on the Commission within 10 days of being filed at the office of the Court of Québec.

The secretary of the Commission shall send two copies of the decision appealed from and of the documents related to the contestation to the office of the Court, in place of the joint record.”

78. The said Act is amended by inserting, after section 70, the following :

“70.1. No personal information agent may invoke registration with the Commission to hold out that the agent’s competence, solvency, conduct or operations are recognized or approved.”

79. Section 78 of the said Act is amended by replacing “in the region of the domicile of the person concerned” in the sixth and seventh lines by “in Québec”.

80. Section 85 of the said Act is amended by inserting “its members” after “Commission,” in the first line.

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

“85.1. A member of the Commission may, on behalf of the Commission, act alone to exercise the powers conferred on the Commission by sections 81 to 84.”

82. Section 88 of the said Act is amended by inserting, after the first paragraph, the following:

“The Commission shall also report on legislative provisions that expressly state that they apply notwithstanding this Act and on the impact of technologies on the right to privacy.”

83. Section 90 of the said Act is amended by adding, after subparagraph 4 of the first paragraph, the following:

“(5) determine, among the provisions of a regulation, those the violation of which constitutes an offence.”

84. Section 91 of the said Act is replaced by the following:

“91. Every person who

(1) upon establishing a file on another person, omits, contrary to section 4, to make an entry indicating the object of the file;

(2) collects personal information otherwise than in accordance with the provisions of sections 5 to 8;

(3) contrary to section 9, refuses to respond to a request for goods or services or to a request relating to employment;

(4) collects, holds, uses or communicates personal information concerning another person without having developed or without applying security measures to preserve the confidentiality of the information;

(5) uses personal information contrary to the provisions of sections 12 and 13;

(6) communicates, without the consent of the person concerned, personal information that cannot be communicated without the person’s consent under the provisions of section 17, 18 or 18.1;

(7) contravenes any provision of section 19;

(8) as an employee, mandatary or agent of a person carrying on an enterprise or as a party to a contract for services or a contract of enterprise, attempts to obtain personal information within the enterprise without being qualified to receive such information or despite the fact that the information is not needed for the performance of the person’s duties, as is required under section 20;

(9) communicates or uses, otherwise than in accordance with sections 22 to 24, a nominative list or information used in the establishment of such a list;

(10) fails to delete with dispatch, from a nominative list, information concerning a person at that person's request pursuant to section 25;

(11) contravenes an order of the Commission,

is liable to a fine of \$1,000 to \$10,000 and, for a subsequent offence, to a fine of \$10,000 to \$20,000."

85. Section 92 of the said Act is amended by inserting ", 70.1" after "70" in the second line.

86. The said Act is amended by inserting, after section 92, the following:

"92.1. Every person who contravenes a provision of a regulation of the Government the violation of which constitutes an offence is guilty of an offence and is liable to a fine of \$200 to \$1,000 and, for any subsequent offence, to a fine of \$500 to \$2,500.

"92.2. Every person who impedes the progress of an inquiry or the hearing of an application by the Commission by providing the latter with false or inaccurate information, or otherwise, is guilty of an offence and is liable to the fine prescribed in section 92.1.

"92.3. Every person who impedes the progress of an inquiry or the hearing of an application by the Commission by omitting, without a valid excuse, to provide the information required by the Commission is guilty of an offence and is liable to a fine of \$50 for each day or part of a day during which the offence continues."

TRANSITIONAL AND FINAL PROVISIONS

87. Section 14.9 of the Financial Administration Act (R.S.Q., chapter A-6) is amended by replacing "68.1 and 70" in the first line by "70 and 70.1".

88. Section 19 of the Archives Act (R.S.Q., chapter A-21.1) is amended by adding, after the first paragraph, the following:

"However, where such documents contain personal information that is not structured so as to be retrievable by reference to the name of a person or to a sign or symbol identifiable with a person and the processing of the information is not automated, they may be communicated to a person before the expiry of that time for research purposes. The person to whom they are communicated must preserve the confidentiality of personal information during the period in which it may not be released without the consent of the person concerned."

89. Section 659 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2), amended by section 75 of chapter 23 of the statutes of 1995 and by section 44 of chapter 34 of the statutes of 1997, is again amended by replacing "70" in the third line of the third paragraph by "70.1".

90. Section 282 of the Act respecting school elections (R.S.Q., chapter E-2.3) is amended by replacing “70” in the first line of the first paragraph by “70.1”.

91. Section 71.4 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by replacing “67.3, 67.4, 68, 68.1 and 70” in the first line of the second paragraph by “68, 70 and 70.1”.

92. Section 118.5 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by replacing the second paragraph by the following:

“The information contained in the register and in the documents to which it refers is accessible, subject to the restrictions to the right of access provided for in sections 23, 24 and 28 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

93. Section 223 of the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10) is amended by replacing “70” in the last line of the second paragraph by “70.1”.

94. The words “nominative” and “nominal” in the following provisions are replaced by the word “personal”:

(1) the headings of Divisions I, II and IV of Chapter III and sections 54, 56, 58, 59, 60, 61, 62, 64, 66, 67.1, 71, 72, 73, 78, 80, 81, 83, 84.1, 86, 86.1, 87, 87.1, 88, 89, 92, 95, 124, 125, 127, 128, 166, 171 and 177 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1);

(2) sections 20 and 26 of the Archives Act (R.S.Q., chapter A-21.1);

(3) section 129.1.1 of the Building Act (R.S.Q., chapter B-1.1);

(4) section 610 of the Highway Safety Code (R.S.Q., chapter C-24.2);

(5) section 53 of the Public Curator Act (R.S.Q., chapter C-81);

(6) section 659.1 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2);

(7) section 282.1 of the Act respecting school elections (R.S.Q., chapter E-2.3);

(8) section 40.42 of the Election Act (R.S.Q., chapter E-3.3);

(9) section 1 of the Act to establish the permanent list of electors (R.S.Q., chapter E-12.2);

(10) section 71 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);

(11) section 37.12 of the Act respecting the Régie de l'assurance-maladie du Québec (R.S.Q., chapter R-5);

(12) section 123.4.1 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20);

(13) sections 65.1 and 65.2 of the Act respecting income security (R.S.Q., chapter S-3.1.1);

(14) section 433 and paragraph 26 of section 505 of the Act respecting health services and social services (R.S.Q., chapter S-4.2);

(15) sections 7 and 8 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5).

Unless the context indicates another meaning, in any other Act and in any regulation, order in council, order, proclamation, ordinance, contract, agreement, accord or other document, where the word “nominative” qualifies information, it is replaced by the word “personal”.

95. This Act comes into force on (*insert here the date of assent to this Act*), except section 3 and paragraph 3 of section 28 which come into force on the date to be fixed by the Government.