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AN ACT TO AMEND THE PUBLIC PROTECTOR ACT

Bill 26

Introduced by Mr Herbert Marx, Minister of Justice

Introduced 14 May 1987

Passage in principle 12 June 1987

Passage 23 June 1987

Assented to 23 June 1987

Coming into force: 23 June 1987

Act amended:

Public Protector Act (R.S.Q., chapter P-32)





CHAPTER 46

An Act to amend the Public Protector Act

[Assented to 23 June 1987]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

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

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

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

c. P-32, s. 8, am. **2.** Section 8 of the said Act is amended

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

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

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

c. P-32,
s. 11, am.

3. Section 11 of the said Act is amended by replacing the words “before him the oaths prescribed in Schedules A and B to this Act” in the second and third lines of the second paragraph by the words “the oath or make the solemn affirmation prescribed in the schedule before the Public Protector”.

c. P-32,
s. 12,
replaced

4. Section 12 of the said Act, replaced by section 599 of the Act respecting public elementary and secondary education (R.S.Q., chapter E-8.1), is again replaced by the following section:

Duties

“12. The Public Protector shall define the duties of his assistant, public servants and employees.

Delegation
of powers

He shall direct their work and may delegate to them in writing each of his powers except those assigned to him by sections 26.1, 26.2, 27, 27.3, 27.4 and 28.”

c. P-32,
ss. 13-19,
replaced

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

Intervention

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

Request

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

Public
body

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

(1) a department;

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

Deemed
public
bodies

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

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

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

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

(4) the Public Curator.

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

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

No intervention “**18.** The Public Protector cannot intervene in respect of an act or omission of

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

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

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

(4) a person referred to in section 2 or 2.2 of the Police Act (R.S.Q., chapter P-13), while he was acting as a peace officer;

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

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

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

Judicial remedy The Public Protector shall also terminate an intervention or refuse to intervene where any remedy pursued before the Supreme Court of

Canada or any court referred to in section 1 of the Courts of Justice Act (R.S.Q., chapter T-16), by the person or group whose interests are concerned by the intervention, pertains to the facts on which the intervention is based.

Refusal to
intervene

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

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

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

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

Notice

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

Motion as
to competence

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

c. P-32,
Div. IV,
replaced

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

“DIVISION IV

“APPLICATIONS FOR INTERVENTION

Content of
application

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

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

(2) state the facts justifying the application;

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

Writing

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

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

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

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

c. P-32, Div. V, replaced **7.** Division V of the said Act is replaced by the following division:

“DIVISION V

“INTERVENTION

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

Prejudicial situation Where an intervention addressed to the author of the act or omission, and to his superiors if deemed expedient by the Public Protector, has failed to remedy the prejudicial situation, the Public Protector shall give the chief executive officer of the public body an opportunity to be heard and, where appropriate, shall invite him to remedy the situation.

Privacy **“24.** Every intervention by the Public Protector shall be in private.

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

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

Applicable provisions • Articles 307, 308 and 309 of the Code of Civil Procedure apply, adapted as required.”

c. P-32, Div. VI, replaced **8.** Division VI of the said Act is replaced by the following division:

"DIVISION VI

"NOTICES, RECOMMENDATIONS AND REPORTS

- Notice to the parties **"26.** Where, after acting pursuant to Division V, the Public Protector is of opinion that no prejudicial situation exists or that the prejudicial situation brought to his attention has been adequately remedied, he shall promptly notify the interested parties.
- Prejudicial situation **"26.1** The Public Protector shall notify in writing the chief executive officer of a public body where he is of opinion that the public body or a person accountable to the chief executive officer
- (1) has not complied with the law;
 - (2) has acted in an unreasonable, unjust, arbitrary or discriminatory manner;
 - (3) has failed in its or his duty or has been guilty of misconduct or negligence;
 - (4) has committed an error of law or of fact; or,
 - (5) in the exercise of a discretionary power, has acted for an unjust purpose, has been actuated by irrelevant motives or has failed to give reasons for its or his discretionary act when it or he should have done so.
- Recommendations **"26.2** Where the Public Protector sends a notice to the chief executive officer of a public body, he may add any recommendation he deems useful and ask to be informed of the measures actually taken to remedy the prejudicial situation.
- Unremedied prejudicial situation **"27.** Where, after making a recommendation to the chief executive officer of a public body, the Public Protector is of opinion that no satisfactory measure has been taken within a reasonable time by the chief executive officer to remedy the situation adequately, he may notify the Government in writing and, if he deems it expedient, he may relate the case in a special report or in his annual report to the National Assembly.
- Results of intervention **"27.1** The Public Protector shall promptly inform the person or group whose interests are concerned of the results of his intervention.
- Yearly report **"27.2** The Public Protector shall, at least once yearly, transmit to the chief executive officer of a public body a summary report stating the number of interventions involving the public body or a person accountable to the chief executive officer during the period covered by the report, and the nature and outcome of each intervention.

Necessary
reform

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

Report to
National
Assembly

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

Public com-
ment

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

Interest of
persons
involved

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

Annual
report

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

Content

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

Tabling

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

Publication

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

c. P-32,
s. 33,
replaced

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

Offence and
penalty

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

Offence and
penalty

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

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

c. P-32,
s. 34,
replaced **10.** Section 34 of the said Act is replaced by the following section:

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

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

c. P-32,
s. 37,
replaced **11.** Section 37 of the said Act is replaced by the following sections:

Transfer to
public service **“37.** A public servant or employee of the Public Protector may apply for his transfer to a position in the public service or participate in a competition for promotion in accordance with the Public Service Act if, immediately before being appointed to the staff of the Public Protector, he held a position, with permanent tenure, in the public service.

Regular
position The first paragraph applies also to any public servant or employee of the Public Protector who has already been appointed on a permanent basis to the public service and who, on 23 June 1987, holds a regular position, with permanent tenure, on the staff of the Public Protector.

Applicable
provision **“37.1** Section 35 of the Public Service Act applies to every person contemplated in section 37 who participates in a competition for promotion to a position in the public service.

Classification **“37.2** Where a person contemplated in section 37 applies for a transfer or a competition for promotion, he may apply to the Office des ressources humaines for an opinion as to the classification he would be assigned in the public service. The opinion must take into account the person’s classification in the public service on the date on which he left and the experience and formal training he has acquired since that date.

Transfer Where a person is transferred pursuant to section 37, the deputy minister or the chief executive officer of the agency shall assign a classification to him in accordance with the opinion contemplated in the first paragraph.

Promotion Where a person is promoted pursuant to section 37, his classification shall take into account the criteria described in the first paragraph.

Lack of work “**37.3** Where the Public Protector partly or completely ceases his activities or in the case of a lack of work, a person referred to in section 37 is entitled to be placed on reserve in the public service and to retain the classification he had before the date on which he left.

Classification In such a case, the Office des ressources humaines shall, where required, assign a classification to the person, taking into account the criteria described in the first paragraph of section 37.2.

Reserve “**37.4** A person placed on reserve according to section 37.3 shall remain with the Public Protector until the Office des ressources humaines can place him.”

c. P-32, Sched. A and B, replaced **12.** Schedules A and B to the said Act are replaced by the following schedule:

“SCHEDULE

“OATH OR SOLEMN DECLARATION

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

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

Coming into force **13.** This Act comes into force on 23 June 1987.