



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 136
(1997, chapter 52)

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

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EXPLANATORY NOTES

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

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

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

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

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

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

LEGISLATION AMENDED BY THIS BILL :

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

Bill 136

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

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

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

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

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

3. Section 41 of the said Act is amended

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

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

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

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

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

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

6. Section 44 of the said Act is amended

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

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

7. Section 46 of the said Act is amended

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

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

“He may delegate, in writing, all or some of his powers to the deputy commissioner, except the powers conferred on him by sections 48, 49 and 83.”

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

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

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

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

They shall, in particular, assist the complainant in identifying the evidence required to substantiate his complaint.

In the case of complaints lodged with the commissioner or a police force, the members of the staff of the commissioner or of the police force shall see that the documents and evidence collected by the complainant are secured. They shall provide the complainant with a copy of the complaint together with a list of the documents and evidence collected by the complainant.

“51.2. The members of the staff of the commissioner or of the police force who receive the complaint shall, within five days of receipt, forward a copy of the complaint to the director of the police force concerned, together with a copy of the evidence collected. Where the complaint is received by a police force, the documents shall also be sent within the same time to the commissioner.

“51.3. The commissioner shall inform the complainant of the procedure for dealing with complaints and, in particular, of the conciliation procedure.

“51.4. Every complaint shall be submitted to conciliation. However, a complainant may object to conciliation by stating the reasons why he believes conciliation is inappropriate in his case. He shall give a written statement of the reasons to the commissioner within 30 days after the lodging of the complaint.

The commissioner may reject the complaint, giving reasons, if in his opinion, the reasons stated by the complainant do not validly justify his refusal of conciliation. The commissioner shall inform the complainant of his right to obtain a review of the decision if he submits new facts or elements to the commissioner within 15 days. The commissioner shall render his decision within ten days and the decision is final.

The complainant may at any time before the final decision accept conciliation by withdrawing his objection.

“51.5. Every complaint relating to an event that in the opinion of the commissioner involves the public interest, in particular, events in which death or serious bodily harm has occurred, situations potentially injurious to the public’s confidence in police officers, criminal offences, repeat offences or other serious matters, shall be dealt with under his authority. Complaints which are clearly frivolous or vexatious and complaints in respect of which the commissioner is satisfied that the complainant has valid reasons for objecting to conciliation shall also be dealt with under the commissioner’s authority.

“51.6. Within 40 days of receipt of a complaint or of identification of the police officer concerned, the commissioner shall, after making a preliminary analysis of the complaint,

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

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

(3) where applicable, designate the conciliator and transmit the file to him;

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

(5) notify the police officer concerned in writing of the substance of the complaint and of the facts enabling the event that gave rise to the complaint to be identified.”

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

“52. The right to lodge a complaint regarding police ethics is prescribed one year after the date of the event or knowledge of the event that gave rise to the complaint.”

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

13. Section 54 of the said Act is repealed.

14. Section 57 of the said Act is repealed.

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

“58. The commissioner shall designate conciliators for complaints regarding police ethics; the conciliators must not be, nor have been, police officers.

“58.1. The costs connected with conciliation shall be borne by the employer of the police officer concerned by the complaint in accordance with the rates established by the Minister.

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

“58.3. During the conciliation proceedings, the complainant and the police officer may be accompanied by a person of their choice.

The presence of the police officer, who may not be in uniform, and of the complainant is mandatory. The conciliation proceedings take place in the presence of both parties; however, the conciliator may meet separately with each party in order to arrive at a settlement.

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

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

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

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

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

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

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

18. Section 66 of the said Act is amended

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

(2) by replacing the words “submit the decision to review by the Comité de déontologie policière” in the fourth and fifth lines by the words “obtain a review of the decision by submitting new facts or elements to the commissioner, within 15 days. The commissioner shall make his decision upon the review within ten days and the decision is final.”

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

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

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

An investigator may not be assigned to a file involving the police force to which he belongs or has belonged.

68.1. The costs connected with the investigation shall be borne by the employer of the police officer concerned by the investigation in accordance with the rates established by the Minister.”

21. Section 69 of the said Act is repealed.

22. Section 72 of the said Act is amended

(1) by replacing the figure “60” in the first line by the figure “45”;

(2) by replacing the word “monthly” in the second line by the words “as needed”.

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

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

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

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

25. Section 74 of the said Act is amended

(1) by striking out the word “clearly” in the second line of subparagraph 1 of the first paragraph ;

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

26. Section 76 of the said Act is amended

(1) by replacing the words “15 days after notification of the decision made by the commissioner pursuant to section 65 or” in the first and second lines of the first paragraph by the words “30 days after notification of the decision rendered by the commissioner pursuant to” ;

(2) by striking out the second paragraph.

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

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

28. Section 91 of the said Act is repealed.

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

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

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

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

31. Section 95 of the said Act is amended

(1) by striking out the words “or part-time” in the second and third lines of the first paragraph ;

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

“The Government shall also appoint, for a fixed term of not more than five years, part-time members who are members of a Native community to act where a complaint relates to a Native police officer. Their term may be renewed.”

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

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

33. Sections 97, 100, 101 and 105 of the said Act are repealed.

34. Section 106 of the said Act is amended by striking out the words “designated by the Government” in the second line of the first paragraph.

35. Section 107 of the said Act is repealed.

36. Section 107.1 of the said Act is replaced by the following section :

“**107.1.** The sittings of the ethics committee are held by one member.”

37. Section 107.2 of the said Act is repealed.

38. Section 107.7 of the said Act is amended by replacing the word “a” after the word “chairman” in the second line by the word “the”.

39. Section 111 of the said Act is replaced by the following section :

“**111.** The citation shall contain as many counts as there are alleged transgressions. Each count of a citation must describe the conduct constituting a transgression of the Code of ethics and indicate what provision of the code has allegedly been transgressed, as well as the time and place of the alleged transgression.”

40. Section 115 of the said Act is amended by replacing the words “vice-chairman appointed to the division concerned” in the first and second lines by the word “chairman”.

41. Section 119 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**119.** Each party shall summon the witnesses whose testimony may be useful and may require the production of any pertinent document.”

42. Section 125 of the said Act is amended

(1) by replacing the words “an indictable offence” in the third line of the first paragraph by the words “a criminal offence”;

(2) by replacing the words “an indictable offence” in the second line of the third paragraph by the words “a criminal offence”.

43. Section 127 of the said Act is amended

(1) by replacing the words “The citation” in the first line of the first paragraph by the words “Any of the counts in the citation”;

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

“However, the committee shall not, except with the consent of the parties, allow any amendment to a count that would result in a new count unrelated to the original count. In such a case, the commissioner shall file a new citation.”

44. Section 128 of the said Act is repealed.

45. Section 130 of the said Act is amended

(1) by replacing the words “one of the following penalties on the police officer” in the third and fourth lines by the words “on the police officer, for each count, one of the following penalties which may, where applicable, be consecutive”;

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

“(2.1) a rebuke;”;

(3) by adding, after paragraph 5, the following paragraph:

“In addition, where a penalty cannot be imposed on a police officer because he has resigned, has been dismissed or has retired, the police officer may be declared disqualified from exercising the functions of a peace officer for a period of not more than five years.”

46. Section 131 of the said Act is amended by inserting the words “and other benefits attaching to the position that” after the word “salary” in the fifth line of the second paragraph.

47. Section 132 of the said Act is amended by inserting the words “, on the director of the police force or employer concerned” after the word “parties” in the third line.

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

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

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

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

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

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

POLICE ACT

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

TRANSITIONAL AND FINAL PROVISIONS

52. This Act applies to any complaint regarding police ethics received by the commissioner before 1 October 1997. The commissioner may refer the complaint to conciliation if he considers it advisable to do so.

53. Every complaint regarding police ethics that gave rise to a citation before the ethics committee and in respect of which a hearing has commenced before 1 October 1997 shall continue to be dealt with in accordance with the provisions of the Act respecting police organization, as they read on 30 September 1997.

54. Prescription under the terms of section 52 of the Act respecting police organization as amended by section 11 of this Act applies to any event that occurred before 1 October 1997 except if the period of time left to run is less than one year, in which case that period applies.

55. The term of office of the deputy police ethics commissioners shall terminate on 1 October 1997.

56. The term of office of the members of the police ethics committee terminates on 1 October 1997 except the term of office of committee members who have been members of the Barreau for at least ten years which shall continue until the date of expiry.

A member whose term has terminated under the first paragraph may continue to hear and decide a matter notwithstanding that termination.

57. This Act comes into force on 1 October 1997.