



NATIONAL ASSEMBLY

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THIRTY-SEVENTH LEGISLATURE

Bill 106
(2005, chapter 16)

An Act to amend the Education Act and the Act respecting private education

Introduced 10 May 2005
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EXPLANATORY NOTES

This bill amends the Education Act to confer on the governing board of a school or of a vocational training centre, as regards the students referred to in section 1 of that Act, the power, on one hand, to establish the principles for determining the cost of documents that are not free under the Act and, on the other hand, to approve a list of pencils, paper and other objects of the same nature made available to students free of charge under this Act. It also provides that a school board must adopt a policy on certain financial contributions after consulting with the parents' committee.

The bill also amends the Education Act with respect to teaching licences. It provides, in particular, that applicants for a teaching licence and teaching licence holders must provide a declaration concerning their judicial record, which the bill empowers the Minister of Education, Recreation and Sports to verify or have verified. Changes are made to the Minister's powers to issue, renew, suspend, revoke or attach conditions to a teaching licence on the basis of the relevance of the applicant's or licence holder's judicial record to the practice of the teaching profession.

The bill amends the Education Act and the Act respecting private education mainly to set out the duties and powers of school boards and certain private educational institutions in order to ensure that persons working with minor students or regularly in contact with minor students in a school board or institution do not have a judicial record relevant to their functions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting private education (R.S.Q., chapter E-9.1);
- Education Act (R.S.Q., chapter I-13.3);
- Act respecting administrative justice (R.S.Q., chapter J-3).

Bill 106

AN ACT TO AMEND THE EDUCATION ACT AND THE ACT RESPECTING PRIVATE EDUCATION

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Education Act (R.S.Q., chapter I-13.3) is amended by inserting the following sections after the heading of Division III of Chapter II:

“22.1. The Minister may verify a declaration concerning a judicial record required under this division, or have it verified, in particular by a Québec police force, and communicate and receive any information needed for the purposes of the verification.

“22.2. For the purposes of this division, the information concerning a judicial record provided for in its provisions may be gathered, used and kept only with a view to ensuring the safety and well-being of the students.”

2. The Act is amended by striking out the heading of subdivision 1 of Division III of Chapter II and section 24.

3. The Act is amended by replacing the heading of subdivision 2 of Division III of Chapter II by the following:

“§1. — Conditions relating to an application for a teaching licence

“25.1. An applicant for a teaching licence must satisfy the requirements that the Minister prescribes by regulation and send the Minister an application and a declaration concerning the applicant’s judicial record. That declaration must mention

(1) any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence;

(2) any charge still pending for a criminal or penal offence committed in Canada or elsewhere; and

(3) any court order subsisting against the applicant in Canada or elsewhere.

The declaration form established by the Minister must mention that the Minister may verify the declaration or have it verified, in particular by a Québec police force, and communicate and receive any information needed for the purposes of the verification.

“25.2. If a teaching licence has been revoked because of a conviction which, in the Minister’s opinion, is relevant to the practice of the teaching profession, or because of a serious fault committed in the exercise of the teacher’s functions or an act derogatory to the honour or dignity of the teaching profession, the person who held the teaching licence may not submit a new application to the Minister for a decision unless

(1) the person has obtained a pardon for the criminal or penal offence that was the reason for the revocation; or

(2) two years have passed since the date of the revocation and the person’s behaviour has been above reproach during that time.

“§2. — *Declarations of a person holding a teaching licence*

“25.3. If the Minister has reasonable grounds to believe that a person holding a teaching licence has a judicial record, the person may be required to send the Minister a declaration concerning the person’s judicial record. That declaration must mention

(1) any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence;

(2) any charge still pending for a criminal or penal offence committed in Canada or elsewhere; and

(3) any court order subsisting against the person in Canada or elsewhere.

The declaration form established by the Minister must mention that the Minister may verify the declaration or have it verified, in particular by a Québec police force, and communicate and receive any information needed for the purposes of the verification.

“25.4. Within 10 days of being notified of a change in the judicial record referred to in section 25.3, a person holding a teaching licence must inform the Minister of the change, regardless of whether the person has already filed a declaration concerning the person’s judicial record.

“§3. — *Serious fault or derogatory act committed by a person holding a teaching licence*”.

4. Section 26 of the Act is amended by inserting the following paragraph after the first paragraph:

“An information stating that a teacher has had a conviction is not considered a complaint for the purposes of this subdivision.”

5. Sections 34 to 34.3 of the Act are replaced by the following:

“§4. — *Decisions of Minister regarding teaching licences*

“**34.** The Minister shall issue or renew a teaching licence if the applicant respects the required conditions.

“**34.1.** The Minister may not issue a teaching licence if the applicant has been convicted of a criminal or penal offence committed in Canada or elsewhere which, in the Minister’s opinion, is relevant to the practice of the teaching profession, unless a pardon has been obtained for that offence.

“**34.2.** If a charge for a criminal or penal offence is still pending in Canada or elsewhere against the applicant for the issue of a teaching licence, or if the applicant is under a court order in Canada or elsewhere, the Minister shall defer the examination of the application if of the opinion that the offence or order is relevant to the practice of the teaching profession.

“**34.3.** The Minister may refuse to renew a teaching licence, or may suspend or revoke it or attach conditions to it if the licence holder

(1) has been convicted of a criminal or penal offence committed in Canada or elsewhere which, in the Minister’s opinion, is relevant to the practice of the teaching profession, unless a pardon has been obtained for that offence;

(2) fails to provide a declaration concerning his judicial record or makes false statements on such a declaration;

(3) fails to inform the Minister of a change in his judicial record; or

(4) admits to having committed a serious fault in the exercise of his functions, or an act derogatory to the honour or dignity of the teaching profession, or, in the opinion of the inquiry committee, has committed such a fault or act.

In addition, the Minister may revoke a teaching licence if the licence holder has failed to respect the conditions attached to it by the Minister.

“**34.4.** If a charge is still pending against a person holding a teaching licence for a criminal or penal offence committed in Canada or elsewhere which, in the Minister’s opinion, is relevant to the practice of the teaching profession, the Minister shall submit the case to the inquiry committee so that it may establish whether, in its opinion, the teacher has committed a serious fault in the exercise of the teacher’s functions, or an act derogatory to the honour or dignity of the teaching profession. Sections 29 to 33 apply in such a case, with the necessary modifications.

The same applies if the person holding a teaching licence is under a court order in Canada or elsewhere which, in the Minister's opinion, is relevant to the practice of the teaching profession.

“34.5. If the Minister considers it expedient, a committee of experts may be established to advise the Minister on how to assess the relevance of a judicial record to the practice of the teaching profession.

The committee is made up of persons appointed by the Minister who have expertise, experience and a marked interest in the protection of minors.

“34.6. Before making a decision referred to in section 34.1, 34.2 or 34.3, the Minister must notify the applicant or the licence holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3), and allow the applicant or licence holder at least 10 clear days, or, in the case of a revocation for non-compliance with the conditions attached to a teaching licence, at least 30 days, to submit observations.

The Minister must also notify the applicant or the licence holder in writing of the decision, giving the reasons for it, and inform the applicant or licence holder of the right to contest the decision before the Administrative Tribunal of Québec, and of the applicable time limit.

“34.7. A decision of the Minister referred to in section 34.1, 34.2 or 34.3 may be contested before the Administrative Tribunal of Québec within 60 days of notification of the decision.

A proceeding brought before the Tribunal suspends the execution of the Minister's decision, unless the Tribunal, on a motion heard and decided by preference, orders otherwise owing to the serious risk to the quality of educational services or the safety of the students.

“34.8. If applicable, the Minister shall give the school board that employs the person holding the teaching licence and the person who filed the complaint that gave rise to the decision a written notice of the decision not to renew the licence, to suspend or revoke it or to attach conditions to it, and include the reasons for the decision.”

6. The Act is amended by inserting the following section after section 77:

“77.1. Based on the principal's proposal, the governing board shall establish the principles for determining the cost of the documents mentioned in the second paragraph of section 7. Those principles are taken into account when the choice of textbooks and instructional materials must be approved under subparagraph 3 of the first paragraph of section 96.15.

The governing board shall also approve, on the principal's proposal, a list of the objects mentioned in the third paragraph of section 7.

The principles are established and the list is approved, taking into consideration the school board's policy adopted under section 212.1 and the other financial contributions that may be claimed for services referred to in sections 256 and 292.”

7. The Act is amended by inserting the following section after section 110.3.1:

“110.3.2. Section 77.1 applies to the governing board of a vocational training centre as regards the students referred to in section 1, with the necessary modifications.”

8. Section 193 of the Act is amended by inserting the following paragraph after paragraph 3:

“(3.1) the financial contributions policy adopted under section 212.1;”.

9. The Act is amended by inserting the following section after section 212:

“212.1. After consulting with the parents' committee, the school board shall adopt a policy on the financial contributions that may be made for the documents and objects mentioned in the second and third paragraphs of section 7, or that may be claimed for services referred to in sections 256 and 292.

This policy must respect the powers of the governing board and promote accessibility to the educational services provided for in this Act and prescribed by the basic regulations established by the Government.”

10. The Act is amended by inserting the following sections after the heading of subdivision 6 of Division VI of Chapter V:

“258.1. For the purposes of this subdivision, “judicial record” means

(1) a conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence;

(2) a charge still pending for a criminal or penal offence committed in Canada or elsewhere; and

(3) a court order subsisting against a person in Canada or elsewhere.

“258.2. For the purposes of this subdivision, the information concerning a judicial record provided for in its provisions may be gathered, used and kept only with a view to ensuring the safety and well-being of the students.

The school board must ensure that that information is accessible only to the persons who are qualified to receive it by reason of their responsibilities, and

that those persons undertake in writing with the school board to comply with the limitations set out in the first paragraph.

“258.3. The Minister and the Minister of Public Security shall make a framework agreement for establishing the procedures to be followed by Québec police forces when verifying judicial records for school boards.

“258.4. The Minister shall prepare a judicial record verification guide for school boards and see that it is distributed.”

11. The Act is amended by inserting the following sections after section 261:

“261.0.1. Before hiring persons who would be required to work with minor students or be regularly in contact with them, the school board must ensure that they have no judicial record relevant to the functions that could be assigned to them within that school board.

To that end, those persons must send a declaration concerning their judicial record to the school board. The school board must verify the declaration or have it verified.

“261.0.2. At the request of the school board, persons who work with minor students and persons who are regularly in contact with minor students in the school board must send it a declaration concerning their judicial record so that the school board may ensure that they have no judicial record relevant to their functions within that school board.

To that end, the school board may act on the strength of that declaration, or it may verify the declaration or have it verified.

“261.0.3. If the school board has reasonable grounds to believe that a person who works with minor students in the school board or is regularly in contact with them has a judicial record, it must require the person to send it a declaration concerning the person’s judicial record. The person must comply with the request within 10 days.

The school board must verify the declaration or have it verified, and ensure that the person has no judicial record relevant to the person’s functions within the school board.

“261.0.4. Within 10 days of being notified of a change in their judicial record, persons who work with minor students and persons who are regularly in contact with minor students in the school board must inform the school board of that change, regardless of whether they have already filed a declaration concerning their judicial record.

The school board must verify the declaration or have it verified, and ensure that the person has no judicial record relevant to the person’s functions within the school board.

“261.0.5. When a school board verifies a declaration concerning a judicial record under this subdivision, or has it verified, it may have the declaration verified, in particular, by a Québec police force and communicate or receive any information for the purposes of the verification.

“261.0.6. The form established by the school board for declarations concerning a judicial record under this subdivision must state that the school board may verify the declaration, or have it verified, in particular by a Québec police force, and communicate or receive any information for the purposes of the verification.

The declaration form must also state that the school board will inform the Minister of each case in which it has concluded that the judicial record of a person holding a teaching licence is relevant to the functions that are assigned or that could be assigned to that person within the school board.

“261.0.7. The school board must inform the Minister of each case in which it has concluded that the judicial record of a person holding a teaching licence is relevant to the functions that are assigned or that could be assigned to that person within the school board.”

12. The Act respecting private education (R.S.Q., chapter E-9.1) is amended by inserting the following section after section 50:

“50.1. If applicable, the Minister shall give the institution that employs the person holding the teaching licence and the person who filed the complaint that gave rise to the decision a written notice of the decision not to renew the licence, to suspend or revoke it or to attach conditions to it, and include the reasons for the decision.”

13. The Act is amended by inserting the following subdivision after section 54:

“§1. — Special provisions for institutions dispensing preschool education services, elementary school instructional services and secondary school instructional services

“54.1. For the purposes of this subdivision,

(1) “judicial record” means

(a) a conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence;

(b) a charge still pending for a criminal or penal offence committed in Canada or elsewhere; and

(c) a court order subsisting against a person in Canada or elsewhere; and

(2) “institution” means a private educational institution dispensing all or some preschool education services, elementary school instructional services or secondary school instructional services in general or vocational education, including educational services for adults.

“54.2. For the purposes of this subdivision, the information concerning a judicial record provided for in its provisions may be gathered, used and kept only with a view to ensuring the safety and well-being of the students.

The institution must ensure that that information is accessible only to the persons who are qualified to receive it by reason of their responsibilities, and that those persons undertake in writing with the institution to comply with the limitations set out in the first paragraph.

“54.3. The Minister and the Minister of Public Security shall make a framework agreement for establishing the procedures to be followed by Québec police forces when verifying judicial records for institutions.

“54.4. The Minister shall prepare a judicial record verification guide for institutions and see that it is distributed.

“54.5. Before hiring persons who would be required to work with minor students or be regularly in contact with them, the institution must ensure that they have no judicial record relevant to the functions that could be assigned to them within that institution.

To that end, those persons must send a declaration concerning their judicial record to the institution. The institution must verify the declaration or have it verified.

“54.6. At the request of the institution, persons who work with minor students and persons who are regularly in contact with minor students in the institution must send it a declaration concerning their judicial record so that the institution may ensure that they have no judicial record relevant to their functions within that institution.

To that end, the institution may act on the strength of that declaration, or verify the declaration or have it verified.

“54.7. If the institution has reasonable grounds to believe that a person who works with minor students in the institution or is regularly in contact with them has a judicial record, it must require the person to send it a declaration concerning the person’s judicial record. The person must comply with the request within 10 days.

The institution must verify the declaration or have it verified, and ensure that the person has no judicial record relevant to the functions of that person within the institution.

“54.8. Within 10 days of being notified of a change in their judicial record, persons who work with minor students and persons who are regularly in contact with minor students in the institution must inform the institution of that change, regardless of whether they have already filed a declaration concerning that record.

The institution must verify the declaration or have it verified, and ensure that the person has no judicial record relevant to the person’s functions within the institution.

“54.9. When an institution verifies a declaration concerning a judicial record under this subdivision, or has it verified, it may have the declaration verified, in particular, by a Québec police force and communicate or receive any information for the purposes of the verification.

“54.10. The form established by the institution for declarations concerning a judicial record under this subdivision must state that the institution may verify the declaration, or have it verified, in particular by a Québec police force, and communicate or receive any information for the purposes of the verification.

The declaration form must also state that the institution will inform the Minister of each case in which it has concluded that the judicial record of a person holding a teaching licence is relevant to the functions that are assigned or that could be assigned to that person within the institution.

“54.11. The institution must inform the Minister of each case in which it has concluded that the judicial record of a person holding a teaching licence is relevant to the functions that are assigned or that could be assigned to that person within the institution.”

14. Section 3 of Schedule I to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by replacing “34.3” in paragraph 5.1 by “34.7”.

15. The provisions of this Act come into force on the date or dates to be set by the Government.

