



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 45
(2007, chapter 35)

**An Act to amend the Act respecting the
Barreau du Québec and the Professional
Code**

**Introduced 13 November 2007
Passed in principle 5 December 2007
Passed 14 December 2007
Assented to 18 December 2007**

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EXPLANATORY NOTES

This bill amends the Act respecting the Barreau du Québec to create a new category of member, that is, the category of retired advocate.

Under the new provisions, retired advocates may use the prefix “Me” or “Mtre” before their name provided it is followed by the title “retired advocate”. They may not, however, style themselves as an advocate or attorney, or practise the profession of advocate.

The bill prohibits anyone who is not entered on the Roll of the Bar from using the title “retired advocate”, and provides for the prosecution for illegal practice of any retired advocate who practises the profession of advocate.

As well, the bill introduces new disciplinary rules into the Professional Code. It provides that a disciplinary complaint against a person for acts engaged in in the exercise of a function provided for in the Professional Code or in an Act constituting a professional order is inadmissible. Furthermore, it permits the presentation of a preliminary motion requesting the dismissal of excessive, frivolous or clearly unfounded complaints, and provides for the holding of case management conferences.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting the Barreau du Québec (R.S.Q., chapter B-1);
- Professional Code (R.S.Q., chapter C-26).

Bill 45

AN ACT TO AMEND THE ACT RESPECTING THE BARREAU DU QUÉBEC AND THE PROFESSIONAL CODE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 1 of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) is amended by adding the following paragraph at the end:

“(p) “retired advocate”: a person entered on the Roll as a retired advocate; “advocate” includes “retired advocate”, unless otherwise provided by law.”

2. Section 12 of the Act is amended by inserting “and retired advocates” after “solicitors” in subsection 2.

3. The Act is amended by inserting the following subdivision before subdivision 2 of Division V:

“§1.1 — *Retired advocates*

54.1. An advocate 55 years of age or over who does not practise may be entered on the Roll as a retired advocate, on an application to the executive director.

A retired advocate may use the prefix “Me” or “Mtre” before his name provided it is followed by the title “retired advocate”; he may not, however, assume the title of advocate or attorney, verbally or otherwise, or practise the profession of advocate, in particular perform the acts described in section 128, including pleading or acting before a tribunal referred to in subparagraphs 1 to 7 of paragraph *a* of subsection 2 of that section.”

4. Section 56 of the Act is amended by replacing “write the French” in subsection 3 by “use the prefix”.

5. Section 60 of the Act is amended by replacing subsection 3 by the following subsection:

“(3) The Roll comprises three categories: practising advocates, retired advocates, and solicitors.”

6. Section 61 of the Act is amended by replacing “and is authorized to practise the profession within” by “, and specifying”.

7. Section 68 of the Act is amended

(1) by replacing “practising in” in subsection 4 by “entered on the Roll for”;

(2) by replacing “practise in” in subsection 6 by “be entered on the Roll for”.

8. Section 69 of the Act is amended by replacing “cease to practise his profession” by “cease to be a member in good standing of the Bar”.

9. Section 70 of the Act is amended

(1) by replacing “resume practice” in subsection 1 by “again become a member in good standing of the Bar”;

(2) by replacing “where he intends to practise” in subsection 2 by “for which he intends to be entered on the Roll”;

(3) by replacing “practise the profession” in subsection 4 by “be a member in good standing of the Bar”;

(4) by adding the following subsection at the end:

“(7) This section applies, adapted as required, to retired advocates who apply for entry on the Roll in the category of practising advocates.”

10. Section 71 of the Act is amended by replacing “having ceased to practise the profession without giving the notice prescribed by section 69 whose name is no longer entered on the Roll” in subsection 1 by “who did not give the notice prescribed by section 69 and is no longer entered on the Roll”.

11. Section 75 of the Act is amended by replacing “or re-entry” in subsection 2 by “, re-entry or a change of category”.

12. The Act is amended by inserting the following section after section 123:

“**123.1.** Sections 122 and 123 apply, with the necessary modifications, to retired advocates.”

13. Section 128 of the Act, amended by section 52 of chapter 58 of the statutes of 2006, is again amended by inserting “practising” before “advocate” in the second line of subsection 2.

14. Section 136 of the Act is amended

(1) by replacing “advertises himself” in paragraph *a* by “styles himself”;

(2) by replacing “causes the prefix “Me” or “Mtre” to be placed” in paragraph *b* by “uses the prefix “Me” or “Mtre””.

15. The Act is amended by inserting the following section after section 138:

“**138.1.** A person who assumes the title of retired advocate or any similar title, verbally or otherwise, or in any manner or by any means styles himself as such without being entered on the Roll practises the profession of advocate illegally.”

16. Section 139 of the Act is amended by inserting “, or a retired advocate who practises the profession of advocate, in particular who does anything described in sections 133 to 136,” after “permit”.

17. Section 116 of the Professional Code (R.S.Q., chapter C-26) is amended by adding the following paragraph at the end:

“A complaint made against a person who exercises a function under this Code or under an Act constituting an order, including a syndic or a member of a committee on discipline, by reason of acts engaged in in the exercise of that function is inadmissible.”

18. The Code is amended by inserting the following sections after section 143:

“**143.1.** The committee chairman may, on a motion, dismiss a complaint that the chairman considers excessive, frivolous or clearly unfounded or subject it to certain conditions.

“**143.2.** If warranted by the circumstances of a complaint, for instance the complexity or foreseeable duration of the hearing, the committee chairman may, on the chairman’s own initiative or at the request of one of the parties, convene them to a case management conference in order to, among other things,

(1) come to an agreement with the parties as to the trial of the complaint, specifying the undertakings of the parties and determining the timetable to be complied with;

(2) if the parties fail to agree, determine a timetable for the proceeding, which is binding on the parties; and

(3) determine how the trial of the complaint may be simplified, facilitated or accelerated and the hearing shortened, among other things by better defining the questions at issue or recording admissions concerning any fact or document.

“**143.3.** The minutes of the case management conference shall be drawn up by the secretary of the committee and signed by the chairman.

“143.4. If the parties fail to comply with the agreement or the timetable, the committee chairman may make the appropriate determinations, including foreclosure of a right under the agreement. The chairman may, on request, relieve a defaulting party from default, if required in the interest of justice.

“143.5. Once a party’s failure to participate is noted in the minutes of the case management conference, the committee may make the case management determinations it considers appropriate.”

19. Section 151 of the Code is amended

(1) by inserting “excessive, frivolous or” before “clearly unfounded” in the second paragraph;

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

“The chairman of a committee that dismisses a complaint under section 143.1 may condemn the complainant to pay the costs.”

20. Section 164 of the Code is amended by inserting “or its chairman” after “discipline” in subparagraph 2 of the first paragraph.

21. Section 175 of the Code is amended by inserting “excessive, frivolous or” before “clearly unfounded” at the end of the second paragraph.

22. The new provisions of section 143.1 of the Professional Code apply to complaints already received in accordance with section 126 of the Code on the coming into force of those provisions.

23. This Act comes into force on 18 December 2007.

