



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 187
(2018, chapter 26)

An Act to protect the confidentiality of journalistic sources

Introduced 15 May 2018
Passed in principle 15 June 2018
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Assented to 15 June 2018

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EXPLANATORY NOTES

This Act establishes rules for protecting the confidentiality of journalistic sources.

The Act grants journalists and any person who assists them the right to object to disclosing information or a document before a court, body or person with the power to compel the production of information on the grounds that the information or document identifies or could identify a journalistic source.

The Act sets out the criteria according to which a court, body or person may authorize the disclosure of information or a document that identifies or could identify a journalistic source.

The Code of Civil Procedure is amended to provide for an appeal as of right if a judgment of the Superior Court or the Court of Québec disallows an objection to the disclosure of information or a document based on the protection of the confidentiality of a journalistic source.

Lastly, the Act makes certain rules in the Criminal Code regarding searches of journalistic material applicable to penal matters.

LEGISLATION AMENDED BY THIS ACT:

- Code of Civil Procedure (chapter C-25.01);
- Code of Penal Procedure (chapter C-25.1).

Bill 187

AN ACT TO PROTECT THE CONFIDENTIALITY OF JOURNALISTIC SOURCES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The purpose of this Act is to establish rules to govern the exercise of the rights it confers to protect the confidentiality of journalistic sources.

2. For the purposes of this Act,

“journalist” means a person whose main occupation is to contribute directly, either regularly or occasionally, for consideration, to the collection, writing or production of information for dissemination by the media, or anyone who assists such a person; and

“journalistic source” means a source whose anonymity is essential to the relationship between the source and the journalist to whom the source confidentially transmits information on the journalist’s undertaking not to divulge the identity of the source.

3. A journalist may object to disclosing information or a document before a court, body or person with the power to compel the production of information on the grounds that the information or document identifies or could identify a journalistic source.

A person who was a journalist when information that identifies or could identify a journalistic source was transmitted to the person may also object, in accordance with the first paragraph, to disclosing information or a document.

4. The court, body or person with the power to compel may, on the court’s, body’s or person’s own initiative, raise the application of section 3.

5. The disclosure of information or a document that identifies or could identify a journalistic source may not be authorized unless

(1) the information or document cannot be produced in evidence by any other reasonable means; and

(2) the public interest for the administration of justice in disclosing information or a document outweighs the public interest in preserving the confidentiality of the journalistic source given such considerations as the importance of the information or document to a central issue in the proceeding, the nature of the dispute, freedom of the press, and the impact of disclosure on the journalistic source and the journalist.

6. The court's, body's or person's decision may set out any conditions the court, body or person considers appropriate to protect the identity of the journalistic source.

7. The person requesting the disclosure of information or a document has the burden of proving that the conditions set out in section 5 authorize the disclosure.

CODE OF CIVIL PROCEDURE

8. Article 31 of the Code of Civil Procedure (chapter C-25.01) is amended by replacing "or on professional secrecy" in the first paragraph by ", on professional secrecy or on the protection of the confidentiality of a journalistic source".

CODE OF PENAL PROCEDURE

9. The Code of Penal Procedure (chapter C-25.1) is amended by inserting the following article after article 8.1:

"8.2. In search- and seizure-related matters, subsections 1 and 3 to 10 of section 488.01 and section 488.02 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) apply, with the necessary modifications and despite any inconsistent provision of any Act, to an application for and the execution of a warrant, telewarrant, order or other judicial authorization, for the purposes of a penal investigation, that allows the use of an investigative technique or method or the performance of any act mentioned in the warrant, telewarrant, order or authorization, where the application or execution concerns a journalist's communications or a thing, document or data relating to or in the possession of a journalist.

A judge having jurisdiction to issue a warrant, telewarrant, order or other judicial authorization referred to in the first paragraph has jurisdiction to exercise the powers necessary for the application of subsections 9 and 10 of section 488.01 of the Criminal Code."

10. This Act comes into force on 15 June 2018.