



NATIONAL ASSEMBLY OF QUÉBEC

SECOND SESSION

FORTY-SECOND LEGISLATURE

Bill 92
(2021, chapter 32)

**An Act to create a court specialized in
sexual violence and domestic violence**

**Introduced 15 September 2021
Passed in principle 22 September 2021
Passed 26 November 2021
Assented to 30 November 2021**

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EXPLANATORY NOTES

This Act creates a court specialized in sexual violence and domestic violence in order to reserve a special procedure for proceedings involving such violence, including having the proceedings heard by the Division Specialized in Sexual Violence and Domestic Violence of the Court of Québec.

The Act empowers the Government to determine the types of proceedings to be heard by the Specialized Division as well as empowering the Minister of Justice to determine the judicial districts in which the specialized court is established and, as a result, where the Specialized Division may sit.

The Act provides for continuing education on the realities relating to sexual violence and domestic violence to persons who may intervene within the specialized court.

The Act entrusts the Conseil de la magistrature with establishing a professional development program on the realities relating to sexual violence and domestic violence, after consultation with the persons and bodies it considers appropriate.

Candidates for the office of judge are required to undertake to complete the professional development program if appointed. Retired judges from the Court of Québec and retired presiding justices of the peace must also have completed the program to be authorized to exercise judicial functions.

The Act provides for the Conseil de la magistrature to submit a report annually to the Minister on the implementation of the program and for the report to be then tabled in the National Assembly.

The Act grants the Minister the power to implement a pilot project in at least five judicial districts to establish a specialized court in order to reserve a special procedure for proceedings involving sexual violence or domestic violence. For that purpose, the Minister may establish a division within the Criminal and Penal Division of the Court of Québec called “Division Specialized in Sexual Violence and Domestic Violence” that hears all such proceedings. The Minister may determine the types of proceedings to be heard by the Specialized Division and the judicial districts in which it may sit.

The Act requires the Commission des services juridiques to set up a consultation service for persons who are victims of sexual violence or domestic violence. The consultation is no longer than four hours, although the Commission may, if circumstances warrant, grant extra hours.

The Act allows the Government to appoint no more than three Deputy Directors of Criminal and Penal Prosecutions on the recommendation of the Minister, one of whom is to be chosen from among criminal and penal prosecuting attorneys with at least 10 years' practice as advocates.

Lastly, the Act makes transitional and final provisions.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting legal aid and the provision of certain other legal services (chapter A-14);
- Act respecting municipal courts (chapter C-72.01);
- Act respecting the Director of Criminal and Penal Prosecutions (chapter D-9.1.1);
- Public Service Act (chapter F-3.1.1);
- Courts of Justice Act (chapter T-16).

REGULATIONS AMENDED BY THIS ACT:

- Regulation respecting the application of the Act respecting legal aid and the provision of certain other legal services (chapter A-14, r. 4);
- Regulation respecting the selection procedure of candidates for the office of judge of the Court of Québec, municipal court judge and presiding justice of the peace (chapter T-16, r. 4.1).

Bill 92

AN ACT TO CREATE A COURT SPECIALIZED IN SEXUAL VIOLENCE AND DOMESTIC VIOLENCE

AS sexual violence and domestic violence problems in society are widely prevalent and complex;

AS it is important that psychosocial and justice system actors act in a concerted manner to prevent and fight those problems;

AS respecting the rights of an accused, including the presumption of innocence, is one of the founding principles of the penal and criminal system;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. This Act is intended to rebuild trust in the justice system for persons who are victims of sexual violence or domestic violence and, for that purpose, to see that measures are taken so that persons wishing to do so may initiate and pursue a judicial process.

It is intended to ensure that psychosocial and judicial services offered to persons who are victims are integrated and adapted, that the physical premises are laid out in a safe and reassuring manner and that a sustained effort is made to reduce delays in processing files.

It is intended to ensure a special procedure for proceedings involving sexual violence or domestic violence and ensure the professional development of actors in those matters to reduce the risks of secondary victimization that would expose persons who are victims to trivialization of or a lack of sensitivity regarding the violence they have suffered.

It is intended to ensure that the special needs of persons who are victims of sexual violence or domestic violence are considered all along their journey, including during the judicial process.

It is intended to ensure that persons who are victims are supported by specialized and dedicated actors, and that their specialization is ensured through continuing education.

It is intended to ensure that support measures take into account the cultural and historic realities of First Nations and Inuit persons who are victims.

ACT RESPECTING MUNICIPAL COURTS

2. The Act respecting municipal courts (chapter C-72.01) is amended by inserting the following section after section 33:

“33.1. Any person who is a candidate for the office of judge shall undertake to complete, if appointed, the professional development program on the realities relating to sexual violence and domestic violence established by the Conseil de la magistrature.”

COURTS OF JUSTICE ACT

3. Section 80 of the Courts of Justice Act (chapter T-16) is amended by adding the following paragraph at the end:

“The Criminal and Penal Division shall include a division called “Division Specialized in Sexual Violence and Domestic Violence”.”

4. The Act is amended by inserting the following section after section 83:

“83.0.1. The court specialized in sexual violence and domestic violence is created everywhere in Québec in order to reserve a special procedure for proceedings involving sexual violence or domestic violence, as soon as a person who is a victim contacts a police department, so that

(1) all proceedings involving sexual violence or domestic violence are heard before the Division Specialized in Sexual Violence and Domestic Violence; and

(2) the special needs of persons who are victims and the singular context in which they find themselves are considered throughout the proceedings.

For the purposes of establishing the specialized court,

(1) the Government may, by regulation, determine the types of proceedings heard before the Division Specialized in Sexual Violence and Domestic Violence, which may vary on the basis of any distinction considered useful, in particular on the basis of the judicial districts;

(2) the Minister of Justice may, however, by order and after consulting the Court of Québec and the other partners from the justice system that the Minister considers appropriate, determine the judicial districts in which the court is to be gradually established and, as a result, where the Division Specialized in Sexual Violence and Domestic Violence may sit;

(3) the Director of Criminal and Penal Prosecutions must determine, in light of the facts and circumstances of a case, whether the alleged criminal offence involves sexual violence or domestic violence and, if such is the case and subject to the regulation made under subparagraph 1, refer the case to the Division Specialized in Sexual Violence and Domestic Violence;

(4) the Minister offers persons who are victims services that are integrated and adapted to their needs, which must include support measures, physical premises laid out in a safe and reassuring manner and coordination of the files, regardless of which division of the Court of Québec or Superior Court is to hear any proceeding;

(5) the Minister favours the handling of a proceeding by the same prosecutor at every stage; and

(6) the Minister is responsible for ensuring that the government departments and bodies concerned offer basic and specialized continuing education on the realities relating to sexual violence and domestic violence to persons who may intervene within the specialized court, in particular to defense attorneys, prosecutors, clerks, investigators, police officers, court personnel, interpreters and psychosocial workers; in order to offer such continuing education, the government departments and bodies consult the persons and bodies they consider appropriate on the basis of their experience, expertise, sensitivity or interest regarding those matters.

In the report prepared under section 16.1 of the Act respecting the Ministère de la Justice (chapter M-19), the Minister includes a section about the continuing education offered on the realities relating to sexual violence and domestic violence during the preceding year. That section includes, in particular, for each continuing education activity,

(1) its title, a description of its content, its duration and the dates on which it was offered;

(2) the department or body that offered the activity; and

(3) the number of persons who attended and their professional occupation.”

5. The Act is amended by inserting the following section after section 87:

“87.1. Any person who is a candidate for the office of judge shall undertake to complete, if appointed, the professional development program on the realities relating to sexual violence and domestic violence established by the Conseil de la magistrature.”

6. Section 93 of the Act is amended by adding the following paragraph at the end:

“To be authorized to exercise such functions, a retired judge must have completed the professional development program on the realities relating to sexual violence and domestic violence established by the Conseil de la magistrature.”

7. The Act is amended by inserting the following section after section 162:

“162.1. Any person who is a candidate for the office of presiding justice of the peace shall undertake to complete, if appointed, the professional development program on the realities relating to sexual violence and domestic violence established by the Conseil de la magistrature.”

8. Section 165.1 of the Act is amended by adding the following paragraph at the end:

“To be authorized to exercise such functions, a retired presiding justice of the peace must have completed the professional development program on the realities relating to sexual violence and domestic violence established by the Conseil de la magistrature.”

9. Section 257 of the Act is amended by adding the following paragraph at the end:

“In particular, the council shall establish a professional development program on the realities relating to sexual violence and domestic violence. For that purpose, the council shall consult the persons and bodies it considers appropriate on the basis of their experience, expertise, sensitivity or interest in connection with such matters.”

10. The Act is amended by inserting the following section after section 259:

“259.1. Not later than 31 March each year, the council shall submit a report to the Minister of Justice on the implementation, in the preceding year, of the professional development program on the realities relating to sexual violence and domestic violence.

For each professional development activity, the report shall include, in particular,

- (1) its title, a description of its content, its duration and the dates on which it was held; and
- (2) the number of judges and presiding justices of the peace who attended it.

The Minister shall table the report in the National Assembly within 15 days of receiving it if the Assembly is sitting or, if it is not sitting, within 15 days of resumption.”

ACT RESPECTING LEGAL AID AND THE PROVISION OF CERTAIN
OTHER LEGAL SERVICES

11. The Act respecting legal aid and the provision of certain other legal services (chapter A-14) is amended by inserting the following after the heading of Chapter III:

“DIVISION I

**“CONSULTATION SERVICE FOR PERSONS WHO ARE VICTIMS OF
SEXUAL VIOLENCE OR DOMESTIC VIOLENCE**

“83.0.1. The Commission shall ensure that a consultation service is available to persons who are victims of sexual violence or domestic violence, whether or not financially eligible for legal aid, so that they may receive, free of charge, a maximum of four hours of legal assistance on any issues of law in connection with the violence suffered.

The Commission may, if circumstances warrant, grant a person who is a victim extra hours.

“DIVISION II

**“SERVICES PROVIDED TO PERSONS TO ENSURE THEIR RIGHT TO
A FAIR TRIAL OR FOLLOWING THE ISSUE OF A COURT ORDER
CONCERNING THE DESIGNATION OF COUNSEL”.**

12. The Act is amended by replacing all occurrences of “this chapter” in sections 83.2, 83.3, 83.9, 83.16 and 83.18 by “this division”.

ACT RESPECTING THE DIRECTOR OF CRIMINAL AND PENAL
PROSECUTIONS

13. Section 5 of the Act respecting the Director of Criminal and Penal Prosecutions (chapter D-9.1.1) is amended

(1) by replacing the first paragraph by the following paragraph:

“The Government appoints no more than three Deputy Directors on the recommendation of the Minister of Justice. At least one of the Deputy Directors is chosen from among criminal and penal prosecuting attorneys with at least 10 years’ practice as advocates. The Government also determines the length of the Deputy Directors’ term, which may not be shorter than five years nor longer than seven. The Director defines the duties of the Deputy Directors.”;

(2) in the second paragraph,

(a) by replacing “The person recommended” by “A person recommended”;

(b) by replacing “a notice inviting criminal and penal prosecuting attorneys to apply” by “an invitation for applications”;

(3) by replacing “The Deputy Director” in the third paragraph by “A Deputy Director”.

14. Section 6.1 of the Act is amended

(1) by replacing “The Deputy Director” in the first paragraph by “A Deputy Director”;

(2) by replacing “the Deputy Director” in the second paragraph by “a Deputy Director”.

15. Section 7 of the Act is amended by replacing “the Deputy Director” by “the Deputy Directors”.

16. Sections 8 and 10 of the Act are amended by replacing all occurrences of “the Deputy Director” by “the Deputy Directors”.

17. Section 9 of the Act is replaced by the following section:

“9. If the Director is absent or unable to act, the Minister may designate a Deputy Director to act in that capacity for the period the Director is absent or unable to act.

If the office of Director is vacant following a resignation or otherwise, the Minister may designate a Deputy Director to act as interim Director for a period not exceeding 18 months.

The Deputy Director designated by the Minister under this section must be a criminal and penal prosecuting attorney with at least 10 years’ practice as an advocate.”

18. Sections 11, 16 and 25 of the Act are amended by replacing all occurrences of “the Deputy Director” and “or Deputy Director” by “a Deputy Director” and “or a Deputy Director”, respectively.

19. Schedule 1 to the Act is amended by replacing “d’adjoint au directeur” in the first paragraph in the French text by “de directeur adjoint”.

PUBLIC SERVICE ACT

20. Section 115 of the Public Service Act (chapter F-3.1.1) is amended by replacing “the Deputy Director” in subparagraph 3 of the first paragraph by “one of the Deputy Directors”.

REGULATION RESPECTING THE SELECTION PROCEDURE OF
CANDIDATES FOR THE OFFICE OF JUDGE OF THE COURT OF
QUÉBEC, MUNICIPAL COURT JUDGE AND PRESIDING JUSTICE OF
THE PEACE

21. Schedule A to the Regulation respecting the selection procedure of candidates for the office of judge of the Court of Québec, municipal court judge and presiding justice of the peace (chapter T-16, r. 4.1) is amended by inserting the following paragraph before the last paragraph:

“I undertake to complete, if appointed, the professional development program on the realities relating to sexual violence and domestic violence established by the Conseil de la magistrature.”

REGULATION RESPECTING THE APPLICATION OF THE ACT
RESPECTING LEGAL AID AND THE PROVISION OF CERTAIN
OTHER LEGAL SERVICES

22. Section 97 of the Regulation respecting the application of the Act respecting legal aid and the provision of certain other legal services (chapter A-14, r. 4) is amended by inserting “Division II of” before “Chapter III”.

23. Section 100 of the Regulation is amended by replacing “with Chapter III” in paragraph 1 by “with Division II of Chapter III”.

24. Section 102 of the Regulation is amended by inserting “Division II of” before “Chapter III” in the introductory clause.

TRANSITIONAL AND FINAL PROVISIONS

25. The Minister of Justice must, by regulation, implement a pilot project in at least five judicial districts to establish a specialized court in order to reserve a special procedure for proceedings involving sexual violence or domestic violence as soon as a person who is a victim contacts a police department.

Within the context of the pilot project, which must be evaluated on an ongoing basis,

(1) the Minister may, by regulation, establish a division within the Criminal and Penal Division of the Court of Québec called “Division Specialized in Sexual Violence and Domestic Violence” that hears all proceedings involving sexual violence or domestic violence;

(2) the regulation under subparagraph 1 may, however, determine which types of proceedings are heard before the Specialized Division, which may vary on the basis of any distinction considered useful, in particular on the basis of judicial districts;

(3) the Minister may, by order and after consulting the Court of Québec and the other partners from the judicial system that the Minister considers appropriate, determine the judicial districts in which the Specialized Division may sit; such determination takes into account territorial and populational representativeness, physical facilities and the volume of proceedings;

(4) the Director of Criminal and Penal Prosecutions must determine, in light of the facts and circumstances of a case, whether the alleged criminal offence involves sexual violence or domestic violence and, if such is the case and subject to the regulation made under subparagraphs 1 and 2, refer the case to the Specialized Division;

(5) the Minister offers persons who are victims services that are integrated and adapted to their needs, which must include support measures, physical premises laid out in a safe and reassuring manner and coordination of the files, regardless of which division of the Court of Québec or Superior Court is to hear any proceeding;

(6) the Minister favours the handling of a proceeding by the same prosecutor at every stage;

(7) the Minister is responsible for ensuring that the government departments and bodies concerned offer basic and specialized continuing education on the realities relating to sexual violence and domestic violence to persons who may intervene within the specialized court, in particular to defense attorneys, prosecutors, clerks, investigators, police officers, court personnel, interpreters and psychosocial workers; in order to offer such continuing education, the government departments and bodies consult the persons and bodies they consider appropriate on the basis of their experience, expertise, sensitivity or interest regarding those matters; and

(8) the Minister must prepare the establishment of the permanent specialized court referred to in section 83.0.1 of the Courts of Justice Act (chapter T-16) and undertakes to establish it everywhere in Québec within two years after the end of the pilot project, unless exceptional circumstances warrant otherwise.

Every pilot project implemented under this section ends at the latest on 30 November 2024.

For the purposes of the evaluation required under the second paragraph, the Minister constitutes an advisory panel and appoints its members.

26. The Minister reports on the implementation of this Act not later than five years after its coming into force.

The report gives an account of whether the objectives provided for in section 1 have been attained.

The report is tabled in the National Assembly within 15 days or, if the Assembly is not in session, within 15 days of resumption.

27. The second paragraph of section 93 and the second paragraph of section 165.1 of the Courts of Justice Act, enacted by sections 6 and 8, respectively, do not apply to judges of the Court of Québec or to presiding justices of the peace who retired before 30 May 2022.

28. This Act comes into force on 30 November 2021, except sections 3 and 4, which come into force on 30 November 2024 or an earlier date to be set by the Government.

