



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 180

(2001, chapter 78)

An Act to amend various legislative provisions as regards the disclosure of confidential information to protect individuals

Introduced 15 December 2000

Passage in principle 30 May 2001

Passage 19 December 2001

Assented to 20 December 2001

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EXPLANATORY NOTES

This bill introduces provisions primarily into the legislation pertaining to professional orders and the legislation respecting the protection of personal information to allow confidential information to be communicated without the consent of the person concerned in order to prevent an act of violence, including a suicide, where there is reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.

However, the bill prescribes that the communication of information must be limited to such information as is necessary to achieve the purposes for which the information is communicated and that the information may only be communicated to the person or persons who are exposed to the danger, to their representative or to persons who can come to their aid.

The bill also proposes certain related amendments in respect of youth protection.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1);
- Health Insurance Act (R.S.Q., chapter A-29);
- Act respecting the Barreau du Québec (R.S.Q., chapter B-1);
- Professional Code (R.S.Q., chapter C-26);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Notarial Act (R.S.Q., chapter N-2);
- Youth Protection Act (R.S.Q., chapter P-34.1);
- Act respecting the protection of personal information in the private sector (R.S.Q., chapter P-39.1);
- Act respecting health services and social services (R.S.Q., chapter S-4.2);

- Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5);
- Notaries Act (2000, chapter 44).

Bill 180

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS AS REGARDS THE DISCLOSURE OF CONFIDENTIAL INFORMATION TO PROTECT INDIVIDUALS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. The Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) is amended by inserting the following section after section 59 :

“59.1. In addition to the cases referred to in section 59, a public body may also release nominative information, without the consent of the persons concerned, in order to prevent an act of violence, including suicide, where there is reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.

The information may in such case be released to any person exposed to the danger or that person’s representative, and to any person who can come to that person’s aid.

The person exercising the highest authority in the public body must, by a directive, determine the terms and conditions according to which the information may be released by the personnel of the body. The personnel is required to comply with the directive.”

2. The said Act is amended by inserting the following section after section 60 :

“60.1. The public body that releases information pursuant to section 59.1 may only release such information as is necessary to achieve the purposes for which the information is released.

Where information is so released, the person in charge of the protection of personal information within the public body must record the release in a register kept by the person for that purpose.”

3. Section 63 of the Health Insurance Act (R.S.Q., chapter A-29) is amended by adding the following paragraph at the end :

“However, a person referred to in the first paragraph may, in order to prevent an act of violence, including a suicide, release information in accordance

with the provisions of sections 59.1 and 60.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

4. Section 131 of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) is amended

(1) by adding “or where so ordered by law” at the end of subsection 2;

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

“(3) An advocate may, in addition, communicate information that is protected by professional secrecy, in order to prevent an act of violence, including a suicide, where the advocate has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons. However, the advocate may only communicate the information to a person exposed to the danger or that person’s representative, and to the persons who can come to that person’s aid. The advocate may only communicate such information as is necessary to achieve the purposes for which the information is communicated.”

5. Section 60.4 of the Professional Code (R.S.Q., chapter C-26) is amended by adding the following paragraph at the end:

“The professional may, in addition, communicate information that is protected by professional secrecy, in order to prevent an act of violence, including a suicide, where he has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons. However, the professional may only communicate the information to a person exposed to the danger or that person’s representative, and to the persons who can come to that person’s aid. The professional may only communicate such information as is necessary to achieve the purposes for which the information is communicated.”

6. Section 87 of the said Code is amended by adding the following paragraph at the end:

“Such code must include provisions stating the terms and conditions according to which a professional may communicate the information pursuant to the third paragraph of section 60.4.”

7. Section 69 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), amended by section 135 of chapter 26 of the statutes of 2001, is again amended

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

“A public servant may, in order to prevent an act of violence, including a suicide, communicate information under the conditions prescribed in

sections 59.1 and 60.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”;

(2) by replacing “third” in the first line of the fourth paragraph by “fourth”.

8. Section 72.3 of the said Act is amended by replacing “fourth” in the last line by “fifth”.

9. Section 15 of the Notarial Act (R.S.Q., chapter N-2) is amended by replacing paragraph *a* by the following paragraph:

“(a) not to divulge confidential knowledge acquired in the practice of the notarial profession, unless the notary

(1) is expressly or implicitly authorized to do so by those who made such confidences;

(2) is so ordered by law; or

(3) has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons and the information is communicated in order to prevent an act of violence, including a suicide. However, the notary may only communicate the information to a person exposed to the danger or that person’s representative, and to the persons who can come to that person’s aid. The notary may only communicate such information as is necessary to achieve the purposes for which the information is communicated;”.

10. Section 36 of the Youth Protection Act (R.S.Q., chapter P-34.1) is amended by adding the following at the end:

“In addition, where the director has decided to act on the situation of a child brought to his attention in a case referred to in the first paragraph, the tribunal may, on request, authorize in writing the director or any person acting under section 32 to require that the director of professional services of an institution or any person designated by the executive director of the institution communicate any information of a medical or social nature that is contained in the record of a person, other than the child, referred to in the information brought to the attention of the director, and that is necessary to assess the situation of the child. The tribunal may grant the authorization, subject to the conditions it specifies, if it is satisfied on the basis of a sworn statement by the director or the person acting under section 32 that there is reasonable cause to believe that

(1) the life or security of the child concerned or of another child is threatened, and

(2) it is necessary, for the purpose of assessing the child’s situation, to have access to the information contained in the record of that person.”

11. Section 72.7 of the said Act is replaced by the following section:

“72.7. If there is reasonable cause to believe that the security or development of a child is in danger on any of the grounds set out in subparagraph *c* or *g* of the first paragraph of section 38, the director or the Commission, according to their respective powers, may, to ensure the protection of the child or of another child, report the situation to the Attorney General or to a police force without it being necessary to obtain the consent of the person to whom it relates or an order of the tribunal.

The provisions of this section apply notwithstanding section 72.5 of this Act and notwithstanding subparagraphs 1, 3 and 4 of the second paragraph of section 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

12. The said Act is amended by adding the following section after section 72.7:

“72.8. Notwithstanding section 72.5, the director or the Commission, as the case may be, may, in addition, in order to prevent an act of violence, including a suicide, communicate confidential information without it being necessary to obtain the consent of the person or persons concerned or an order of the tribunal, where there are reasonable grounds to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.

The information may in that case be communicated to any person exposed to the danger or that person’s representative, and to any person who can come to that person’s aid.

The director or the Commission, as the case may be, may only communicate such information as is necessary to achieve the purposes for which the information is communicated.

The provisions of this section apply notwithstanding section 59.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information.

The executive director of an institution operating a child and youth protection centre must, by a directive, determine the terms and conditions according to which the information may be communicated by the director, the director’s personnel and the persons authorized to act under section 33. Those persons are required to comply with the directive.

The president of the Commission exercises the same powers in respect of the members of the personnel of the body, who are required to comply with the directive of the president.”

13. The Act respecting the protection of personal information in the private sector (R.S.Q., chapter P-39.1) is amended by inserting the following section after section 18:

“18.1. In addition to the cases referred to in section 18, a person who carries on an enterprise may also communicate personal information included in a file the person holds on another person, without the consent of the persons concerned, in order to prevent an act of violence, including a suicide, where there is reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.

The information may in such case be communicated to any person exposed to the danger or that person’s representative, and to any person who can come to that person’s aid.

A person carrying on an enterprise who communicates information pursuant to this section may only communicate such information as is necessary to achieve the purposes for which the information is communicated.

Where information is so communicated by a person carrying on an enterprise, the person must make an entry of the communication. That entry is part of the file.”

14. The Act respecting health services and social services (R.S.Q., chapter S-4.2) is amended by inserting the following section after section 19:

“19.0.1. Notwithstanding section 19, information contained in the record of a user may be communicated, in order to prevent an act of violence, including a suicide, without the consent of the user or the person authorized to give such consent on his behalf or an order of the court, where there is reasonable cause to believe that there is an imminent danger of death or serious bodily injury to the user, another person or an identifiable group of persons.

The information may in such case be communicated to any person exposed to the danger or that person’s representative, and to any person who can come to that person’s aid. The information may only be communicated by a person or a person belonging to a class of persons authorized by the director of professional services or, failing such a director, by the executive director of the institution.

The persons so authorized may only communicate such information as is necessary to achieve the purposes for which the information is communicated.

The executive director of the institution must, by a directive, determine the terms and conditions according to which the information may be communicated. Every person authorized to communicate the information is required to comply with the directive.”

15. Section 7 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) is amended

(1) by inserting the following paragraph after the first paragraph :

“However, information contained in the record of a beneficiary may be communicated, in order to prevent an act of violence, including a suicide, without the consent of the beneficiary or an order of the court, where there is reasonable cause to believe that there is an imminent danger of death or serious bodily injury to the beneficiary, another person or an identifiable group of persons. The information may in such case be communicated to any person exposed to the danger or that person’s representative, and to any person who can come to that person’s aid. The information may be communicated only by a person or a person belonging to a class of persons authorized by the director of professional services or, failing such a director, by the executive director of the institution. The persons so authorized may only communicate such information as is necessary to achieve the purposes for which the information is communicated. The executive director of the institution must, by a directive, determine the terms and conditions according to which the information may be communicated. Every person authorized to communicate the information is required to comply with the directive.”;

(2) by replacing “However” at the beginning of the second paragraph by “In addition”;

(3) by replacing “eighth” in the first line of the last paragraph by “ninth”.

16. The Notaries Act (2000, chapter 44) is amended by inserting the following section before section 15:

“14.1. A notary must keep absolutely secret the confidences made to him or her by reason of his or her profession.

Such obligation, however, shall not apply when the notary is expressly or implicitly relieved therefrom by the person who made such confidences or where so ordered by law.

A notary may, in addition, communicate information that is protected by professional secrecy, in order to prevent an act of violence, including a suicide, where the notary has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons. However, the notary may only communicate the information to a person exposed to the danger or that person’s representative, and to persons who can come to that person’s aid. The notary may only communicate such information as is necessary to achieve the purposes for which the information is communicated.”

17. The Bureau of a professional order must, within a year following the date of coming into force of this section, adopt and transmit to the Office des

professions du Québec the regulatory provisions provided for in the second paragraph of section 87 of the Professional Code. If the Bureau fails to adopt and transmit the regulatory provisions within the prescribed time, the Office must recommend that the Government adopt the provisions in the place and stead of the Bureau.

The fact that the code of ethics of an order does not include provisions, setting out the terms and conditions applicable to the communication of information established pursuant to the second paragraph of section 87 of the Professional Code does not exempt a professional entered on the roll of that order from communicating the information.

18. The fact that no directive has been issued by a department or a body to determine the terms and conditions according to which confidential information may be communicated pursuant to section 59.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information, section 72.8 of the Youth Protection Act, section 19.0.1 of the Act respecting health services and social services and the second paragraph of section 7 of the Act respecting health services and social services for Cree Native persons does not dispense a person from communicating such information where the conditions for such a communication exist.

19. This Act comes into force on 20 December 2001, except section 16, which shall come into force on the date fixed by the Government.