



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 38

(2005, chapter 18)

An Act respecting the Health and Welfare Commissioner

Introduced 18 December 2003
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Passage 16 June 2005
Assented to 17 June 2005

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EXPLANATORY NOTES

This bill provides for the appointment of a Health and Welfare Commissioner by the Government for a five-year term, which may be renewed once, and establishes the appointment process to be followed.

The bill provides that, with a view to improving the health and welfare of the population, the Commissioner is responsible for assessing the results achieved by the health and social services system and providing the public with the necessary background for a general understanding of the actions undertaken by the Government to address the major issues in the health and social services arena.

To this end, the Commissioner must, among other functions, evaluate all components of the health and social services system, disseminate information to enable public debate, propose changes, and submit advisory opinions to the Minister of Health and Social Services on the state of health and welfare of the population.

The bill establishes a consultation forum which the Commissioner is required to consult in exercising the functions of office.

The bill gives the Commissioner certain powers, including the power to call on outside experts, the power to hold public hearings and the power to secure access to certain documents or information.

Lastly, the bill provides that the Commissioner is substituted for the Conseil de la santé et du bien-être and the Conseil médical du Québec.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6.001).

LEGISLATION REPEALED BY THIS BILL:

- Act respecting the Conseil de la santé et du bien-être (R.S.Q., chapter C-56.3);
- Act respecting the Conseil médical du Québec (R.S.Q., chapter C-59.0001).

Bill 38

AN ACT RESPECTING THE HEALTH AND WELFARE COMMISSIONER

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPOINTMENT, RESPONSIBILITIES AND ORGANIZATION

1. The Government appoints the Health and Welfare Commissioner in accordance with section 7.

2. With a view to improving the health and welfare of the population, the Commissioner is responsible for assessing the results achieved by the health and social services system taking into account the range of systemic factors that interplay within the system, and for providing the public with the necessary background for a general understanding of the actions undertaken by the Government to address the major issues in the health and social services arena.

The Commissioner exercises these responsibilities with regard to such matters as the quality, accessibility, integration, insurability and funding of services, the determinants of health and welfare, the ethical aspects of health and welfare, medications and technology.

3. The Commissioner is appointed for a five-year term, which may be renewed once. At the end of the term, the Commissioner remains in office until replaced or reappointed.

The Government determines the Commissioner's remuneration, employment benefits and other conditions of employment.

The Commissioner exercises the functions of office on a full-time, exclusive basis.

4. A nominating committee must be formed for the purposes of the Commissioner's appointment by the Government. The nominating committee is composed of 14 members chosen or appointed as follows:

(1) seven Members of the National Assembly chosen by the members of the Parliamentary Committee on Social Affairs from among their number; four of the seven must be from the Government party and the remaining three,

from the Opposition, including one not from the Official Opposition party, if any; and

(2) seven persons appointed by the Government, namely,

(a) a physician appointed after consultation with the Collège des médecins du Québec;

(b) a nurse appointed after consultation with the Ordre des infirmières et infirmiers du Québec;

(c) a social worker appointed after consultation with the Ordre professionnel des travailleurs sociaux du Québec;

(d) a person appointed from among the members of boards of directors of institutions who are elected by the population under paragraph 1 of any of sections 129 to 132.1 and 133 of the Act respecting health services and social services (R.S.Q., chapter S-4.2), after consultation with associations representing these institutions;

(e) a person appointed from among the members of boards of directors of institutions operating a hospital centre who are designated by the users' committee of the institutions under paragraph 2 of any of sections 129, 131 to 132.1 and 133 of the Act respecting health services and social services, after consultation with groups of users' committees;

(f) a person with expertise in the evaluation of health care technologies and medications, appointed after consultation with the Agence d'évaluation des technologies et des modes d'intervention en santé created by Order in Council 855-2000 dated 28 June 2000 and with the Conseil du médicament; and

(g) a person with ethics expertise, appointed after consultation with universities offering philosophy or ethics programs and with associations of institutions whose membership includes one or more institutions that have a research ethics committee or a clinical ethics committee.

5. The members of the nominating committee appointed under paragraph 2 of section 4 are not remunerated; they are, however, entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

6. The members of the nominating committee determine the operating rules applicable to the committee.

Their term ends on the Commissioner's appointment.

7. Within six months after a request by the Minister, the nominating committee must propose to the Minister a list of persons it considers qualified for appointment as Commissioner.

For that purpose, the Minister may submit the name of one or more persons whose qualification for appointment the Minister wishes the committee to examine.

If the nominating committee fails to propose a list in accordance with the first paragraph, the Government may appoint the Commissioner without further formality.

8. The Commissioner appoints one or more Deputy Commissioners from among the Commissioner's personnel. One of the Deputy Commissioners must be specifically responsible for the ethical aspects of health and welfare.

9. If the Commissioner is absent or unable to act, the Government may designate one of the Deputy Commissioners or, if none were appointed, any other person to exercise the Commissioner's responsibilities, functions and powers for as long as the Commissioner is absent or unable to act. The Government determines the person's salary or fees and other conditions of employment.

10. Before entering into office, the Commissioner must take the following oath:

"I declare under oath that I will fulfill my duties with honesty, impartiality and justice. I further declare under oath that I will not reveal or disclose, unless authorized by law, any confidential information that may come to my knowledge in the exercise of my functions."

The Commissioner takes the oath before the Minister of Health and Social Services.

11. The Commissioner's personnel is appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

The Commissioner defines the powers and duties of the Commissioner's personnel and directs their work. The Commissioner may delegate in writing the exercise of any of the powers of office.

12. The Commissioner's secretariat is situated within the territory of Ville de Québec, at the place determined by the Government.

Notice of the location or of any change of location is published in the *Gazette officielle du Québec*.

13. The Commissioner must establish a code of ethics and professional conduct applicable to any outside experts called upon in the exercise of the Commissioner's functions.

CHAPTER II

FUNCTIONS OF THE HEALTH AND WELFARE COMMISSIONER

14. To fully exercise the responsibilities of office, the Health and Welfare Commissioner, among other functions,

(1) evaluates all components of the health and social services system to determine their relevance;

(2) periodically assesses the results achieved by the health and social services system in light of the resources allocated to it and of reasonable expectations given these resources;

(3) informs the Minister and the public of the overall performance of the health and social services system, the changes proposed by the Commissioner to improve such aspects of the system as its effectiveness and efficiency, and the issues and implications associated with the proposed changes;

(4) releases information to enable public debate on and a general understanding of the issues to be addressed and the choices to be made to ensure the sustainability of the health and social services system; and

(5) submits advisory opinions to the Minister on the state of health and welfare of the population in light particularly of retrospective analysis of the impact of government policy on that state.

15. The Government or the Minister may entrust the Commissioner with any special mandate on a matter within the Commissioner's competence. In no case may such a special mandate take precedence over the other functions assigned to the Commissioner under this Act.

16. Within one year from (*insert the date of coming into force of this section*), the Commissioner issues an advisory opinion on the most appropriate way for the Minister and health and social services institutions to inform the public of their rights under the law with respect to health and social services and to sensitize the public to their attendant responsibilities as regards their health and their use of the services offered.

17. The Commissioner exercises the functions of office with due regard for the functions and responsibilities otherwise assigned by law to the Auditor General or another person or body.

CHAPTER III

POWERS OF THE HEALTH AND WELFARE COMMISSIONER

18. In exercising the functions assigned to the Commissioner under sections 14, 15 and 16, the Commissioner must consult the forum established under Chapter IV.

The Commissioner may also, whenever necessary,

(1) call on outside experts to report on one or more specific points determined by the Commissioner;

(2) conduct or commission studies, research or surveys to obtain background on a matter on which the Commissioner must issue an advisory opinion;

(3) request the collaboration of the Minister or the bodies or councils under the Minister's authority by asking them to furnish any expertise they have that is necessary to the Commissioner or to produce an analysis, advisory report or opinion on a matter on which the Commissioner must issue an advisory opinion; and

(4) establish working committees, hold consultations, seek opinions, and receive and hear applications.

19. The Commissioner may hold public hearings anywhere in Québec.

The Commissioner may hold several public hearings simultaneously and determine how they are conducted.

20. Public bodies within the meaning of the first paragraph of section 3 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) must provide the Commissioner with any information or documents that the Commissioner requests and that are necessary for the exercise of the functions of office.

They must allow the Commissioner to have access to and make copies of the information or documents they have, whatever their form.

21. The Commissioner may hold an inquiry if expedient for the exercise of the functions of office.

For the purposes of an inquiry, the Commissioner or any other person appointed by the Commissioner to conduct the inquiry is vested with the powers and immunity provided for in the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

22. Not later than 31 October each year, the Commissioner sends the Minister a report on the exercise of the function assigned to the Commissioner under paragraph 3 of section 14.

The report must give an account of the consultation of the forum required under section 18 and set out the conclusions and recommendations of the forum on each of the matters or issues submitted to it.

The Minister lays the report before the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption.

The report is referred to the appropriate committee of the National Assembly for consideration.

23. As soon as the Commissioner is ready to submit findings or an advisory opinion on a matter that falls within the Commissioner's purview, the Commissioner may send a special report to the Minister or choose to include the findings or advisory opinion in the report referred to in section 22. The second paragraph of that section applies to a special report.

The Minister lays a special report before the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption.

CHAPTER IV CONSULTATION FORUM

24. A consultation forum is established. It is composed of 27 members, including 18 citizens from each of the regions of Québec who do not represent a special interest group and nine other persons with special expertise in the field of health and social services.

These persons are appointed by the Commissioner for a three-year term.

They may be remunerated as determined by the Government and are entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

25. Except for the nine persons with special expertise, a person may not be appointed to the forum if

(1) the person is an employee of the Ministère de la Santé et des Services sociaux, a local health and social services network development agency, the James Bay Cree health and social services council, a health and social services institution or any other organization providing services in the field of health and social services and receiving subsidies from an agency or the Minister of Health and Social Services, the Corporation d'hébergement du Québec or a professional order in the field of health and social services;

(2) the person is an employee of the Régie de l'assurance maladie du Québec, receives remuneration from the Régie or has entered into a service contract under section 259.2 of the Act respecting health services and social services (R.S.Q., chapter S-4.2);

(3) the person is a member of the board of directors of an organization referred to in paragraph 1 or 2 or of the bureau of a professional order in the field of health and social services; or

(4) the person is registered in the registry of lobbyists maintained under the Lobbying Transparency and Ethics Act (R.S.Q., chapter T-11.011).

26. The nine persons with special expertise must be appointed by the Commissioner as follows:

(1) one from each of the fields of expertise of the persons referred to in subparagraphs *a* to *c*, *f* and *g* of paragraph 2 of section 4, for a total of five;

(2) two from sectors of activity related to health or welfare, such as the education, economic, environment and labour sectors;

(3) one from a university health research background; and

(4) one having recognized experience and skills in health and social services management.

27. In appointing the 18 citizens to the forum, the Commissioner must see that all age groups and the sociocultural, ethnocultural and linguistic characteristics of the population of Québec are represented to the greatest extent possible. The appointments must also tend towards gender parity.

In appointing the nine persons with special expertise, the Commissioner must see that the health field and the social services field are represented as equitably as possible.

28. The mandate of the forum is to provide the Commissioner with its point of view on the matters or issues the Commissioner submits to it as part of a consultation.

29. The Government determines, by regulation, the procedure for choosing persons qualified for appointment to the forum.

The procedure must provide that a list of citizens qualified for appointment to the forum be drawn up for each region of Québec and that a list of persons with special expertise qualified for appointment to the forum be drawn up for all of Québec.

Every three years, the Commissioner must publish the procedure with the date the Commissioner has set for making appointments to the forum.

The procedure and date are published twice for each region of Québec in a newspaper circulated in that region.

30. The Commissioner determines the forum's mode of operation and sees that each person appointed to the forum receives a copy of a document describing it.

31. The Commissioner must fill a vacancy on the forum within 60 days after being informed of it, using the appropriate list drawn up under section 29. The person appointed must have the same qualifications for appointment to the forum as the person being replaced.

CHAPTER V

MISCELLANEOUS PROVISIONS

32. The Health and Welfare Commissioner adopts internal management by-laws.

33. No civil action may be instituted by reason of the publication of any report or advisory opinion of the Commissioner or the publication in good faith of an extract from or a summary of any such report or advisory opinion.

34. Except on a question of jurisdiction, no remedy under article 33 of the Code of Civil Procedure (R.S.Q., chapter C-25) or extraordinary recourse within the meaning of that Code may be pursued and no injunction may be granted against the Commissioner, a Deputy Commissioner or the Commissioner's personnel in the exercise of their functions.

A judge of the Court of Appeal, on a motion, may summarily annul any decision rendered or any order or injunction granted contrary to the first paragraph.

35. The fiscal year of the Commissioner ends on 31 March.

36. Not later than 30 June each year, the Commissioner sends the Minister a report on the Commissioner's activities for the preceding fiscal year.

The Minister lays the report before the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption.

37. The Commissioner is deemed to be an agency for the purposes of the law.

CHAPTER VI

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

38. Schedule 1 to the Financial Administration Act (R.S.Q., chapter A-6.001), amended by section 61 of chapter 11 of the statutes of 2004, is again amended

(1) by striking out "Conseil de la santé et du bien-être" and "Conseil médical du Québec";

(2) by inserting "Health and Welfare Commissioner" in the appropriate position in the list, according to alphabetical order.

39. The Act respecting the Conseil de la santé et du bien-être (R.S.Q., chapter C-56.3) is repealed.

40. The Act respecting the Conseil médical du Québec (R.S.Q., chapter C-59.0001) is repealed.

41. The Health and Welfare Commissioner is substituted for the Conseil de la santé et du bien-être and the Conseil médical du Québec. The Commissioner acquires their rights and property and assumes their obligations, and any proceedings to which they were a party may be continued by the Commissioner without continuance of suit.

42. The term of office of the members of the Conseil de la santé et du bien-être and the Conseil médical du Québec ends on (*insert the date of coming into force of this section*).

Members of those councils are entitled only to the transition allowance applicable to them, if any.

43. Employees of the Conseil de la santé et du bien-être and the Conseil médical du Québec appointed in accordance with the Public Service Act who are in office on (*insert the date of coming into force of this section*) become employees of the Commissioner.

44. The records and documents of the Conseil de la santé et du bien-être and the Conseil médical du Québec become the records and documents of the Commissioner, without further formality.

45. Not later than (*insert the date occurring five years after the date of coming into force of this section*), the Commissioner reports to the Minister on the implementation of this Act.

The Minister lays the report before the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption. The report is referred to the appropriate committee of the National Assembly for consideration.

46. The Minister of Health and Social Services is responsible for the administration of this Act.

47. This Act comes into force on 17 June 2005, except sections 2, 14 to 23, 28, 33, 34, 36 and 38 to 45, which come into force on the date or dates to be fixed by the Government.