



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 80

(2006, chapter 33)

An Act to amend the Police Act

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EXPLANATORY NOTES

The main objective of this bill is to introduce a process by which a police officer may apply for a remission with respect to conduct constituting a transgression of the Code of ethics. It determines admissibility criteria for such an application.

The bill confers on the Comité de déontologie policière the responsibility to assess whether there is just cause for granting a remission to a police officer, considering such factors as the seriousness of the transgression and the police officer's conduct since the penalty was imposed. It makes provision for a remission certificate to be issued by the ethics committee.

The bill establishes the principle whereby a remission restores a police officer's reputation even though it does not erase the facts of the past.

The bill also allows the Police Ethics Commissioner to apply for the revocation of a remission if new facts could have warranted a different decision had they been known in time.

Lastly, the bill simplifies the process for the appointment, within the Sûreté du Québec, of certain officers, other than the director general and the assistant directors general, and of constables and auxiliary constables.

Bill 80

AN ACT TO AMEND THE POLICE ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 56 of the Police Act (R.S.Q., chapter P-13.1) is amended

(1) by striking out “and the other senior officers” in the second paragraph;

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

“The other senior officers shall be appointed by the Minister on the recommendation of the Director General.”;

(3) by striking out “, constables and auxiliary constables” in the third paragraph;

(4) by adding the following paragraph:

“The constables and auxiliary constables shall be appointed by the Director General.”

2. Section 66 of the Act is replaced by the following section:

“**66.** Retirement is mandatory for a member of the Sûreté who reaches 65 years of age.”

3. Section 126 of the Act is amended by adding the following paragraph:

“The provisions concerning the director of a police force apply in the same way to the employer of a special constable and, with the necessary modifications, to the employer of a highway controller and of any person having authority over a highway controller.”

4. Section 128 of the Act is amended by inserting the following paragraph after the first paragraph:

“In addition, the Police Ethics Commissioner shall exercise the functions provided for in subdivision 4 of Division III with respect to applications for a remission for a transgression of the Code of ethics filed by a police officer, and shall file applications for revocation of previously granted remissions.”

5. Section 194 of the Act is amended by inserting the following subparagraph at the end of the second paragraph:

“(3) rule, in the cases provided for in subdivision 4, on applications by a police officer for a remission for a transgression of the Code of ethics and on applications by the Commissioner for the revocation of a previously granted remission.”

6. Section 199 of the Act is amended by replacing the third paragraph by the following paragraph:

“The chairman of the ethics committee may allow a member designated to hear a matter under section 205 to continue and decide the matter, despite the expiry of that member’s term.”

7. Section 236 of the Act is amended by replacing “or employer concerned” by “of which the police officer is a member”.

8. Section 239 of the Act is amended by replacing “or the employer” in the third paragraph by “of which the police officer is a member”.

9. Section 244 of the Act is amended by inserting “, the director of the police force of which the police officer is a member” after “parties” in the first paragraph.

10. Section 253 of the Act is amended by adding the following paragraph:

“The director of the police force of which the police officer is a member shall inform the Commissioner of the imposition of the penalty decided by the judge.”

11. Division III of Chapter I of Title IV of the Act is amended by adding the following subdivision after subdivision 3 comprising sections 240 to 255:

“§4.— *Procedures relating to a remission for a transgression of the Code of ethics*

“255.1. A police officer, even if no longer in active service, who was imposed a penalty for a transgression of the Code of ethics may apply for a remission, subject to the following restrictions.

No application may be made for a transgression that led to a discharge or dismissal.

An application is inadmissible if

(1) the applicable waiting period, according to the rules set out in section 255.2, has not been observed;

(2) it is incomplete;

(3) the police officer was found guilty of an offence referred to in subparagraph 3 of the first paragraph of section 115, is under criminal prosecution or, in the year before the application, was the subject of an allegation concerning a criminal offence;

(4) at the time of the application, an ethics proceeding involving the police officer, including a complaint, is before the Commissioner, the ethics committee, the Court of Québec or any other higher court;

(5) at the time of the application, the police officer is under another ethics penalty.

“255.2. A remission may be applied for, in the case of a warning, reprimand or rebuke, two years after the penalty is enforced and, in the case of a suspension or demotion, three years after the penalty is enforced.

A police officer who, having resigned or retired, could not be imposed a penalty but was declared disqualified from acting as a peace officer may apply for a remission three years after the end of the disqualification period.

A police officer having been granted a remission who is imposed a penalty for a new transgression may apply for a remission three years after the penalty for that transgression is enforced.

A new application with respect to the same transgression may be filed three years after the decision of the ethics committee to dismiss the first application.

“255.3. If two or more penalties were imposed on the police officer simultaneously, the waiting period for applying for a remission is the one applicable for the most serious penalty.

“255.4. The application for a remission identifies all the transgressions for which the police officer was imposed a penalty, the penalty imposed for each transgression, the director of the police force that imposed the penalty and the director of the police force of which the police officer is a member on the day the application is filed. It also specifies the authority that rendered the final decision and the reference number of the decision.

“255.5. The duly completed application for a remission is filed at the office of the ethics committee.

The clerk shall acknowledge receipt of the application and shall send a copy of the application to the director of the police force that imposed the penalty for the transgression for which a remission is requested.

A copy of the application is also sent to the director of the police force of which the police officer is a member on the day the application is filed so that

the director may check whether the police officer was found guilty of an offence referred to in subparagraph 3 of the first paragraph of section 115, is under criminal prosecution or, in the year before the application, was the subject of an allegation concerning a criminal offence. If the check is done by an employer to which this chapter applies, the Sûreté du Québec shall provide the employer with the required information on request. The director of the police force shall answer the clerk in writing not later than 30 days after the date the application is filed.

A copy of the application is also sent to the Commissioner to check whether a complaint with respect to the police officer is pending before the Commissioner. The Commissioner shall also record the date on which the penalty for the transgression for which the remission is applied for was imposed. The Commissioner shall answer the clerk in writing not later than 15 days after the date the application is filed, and may include observations.

“255.6. In the case of a first application which meets all the admissibility conditions, the remission is granted of right if the penalty was a warning, reprimand or rebuke, and the Commissioner raises no objection. If the penalty was a suspension or demotion, or the Commissioner raises an objection, the clerk shall send the application to the ethics committee for assessment.

Any new application filed by a police officer who has already been granted or denied a remission is also sent to the ethics committee for assessment.

If the application does not meet all the admissibility conditions, the clerk shall inform the police officer in writing, giving reasons. As soon as the application has been corrected or completed, the police officer may file it again with supporting evidence.

“255.7. When assessing an application, the ethics committee shall consider, among other factors, the seriousness of the transgression and the conduct of the police officer since the resulting penalty was handed down.

The ethics committee invites the police officer concerned and, if it considers it necessary in order to weigh the merits of the application, the director of the police force that imposed the penalty for the transgression, the director of the police force of which the police officer was a member on the day the application was filed and the Commissioner to submit observations either in writing within a specified period or verbally at a sitting convened when and where the ethics committee determines. The ethics committee is required to gather such observations in the case of a new application for the same transgression or in the case of an application filed by a police officer who, after being granted a remission for a transgression, is imposed a penalty for a new transgression of the Code of ethics.

The ethics committee may also require any information or documents it considers necessary.

The clerk shall send the persons concerned a notice containing the relevant information.

“255.8. The rules of evidence, procedure and practice for the hearing of applications under this subdivision are prescribed by a by-law of the ethics committee submitted to the Government for approval.

Subdivision 2 does not apply to the hearing of such applications.

“255.9. If an application is granted, the clerk shall issue a certificate which attests that the police officer concerned is granted a remission and lists all the transgressions for which the police officer was imposed a penalty.

The issue of the certificate is recorded in the register kept for that purpose at the office of the ethics committee.

The clerk shall send a copy of the certificate to the director of the police force that imposed the penalty, to the director of the police force of which the police officer was a member on the day the application was filed, to the Commissioner and, if applicable, to the Court of Québec.

The remission granted is noted in the record of the police officer.

These provisions also apply to the revocation of a previously granted remission.

“255.10. Once an application is granted, the transgression for which the remission is granted may no longer be invoked against the police officer concerned, except if the remission is revoked or if the ethics committee imposes a penalty for a new transgression committed by the police officer.

“255.11. Decisions of the ethics committee with respect to remissions are without appeal.

However, if a new fact is discovered that could have warranted a favourable decision, a police officer who has been denied a remission may apply for a review of the decision. If the new fact warrants the revocation of a previously granted remission, a review may be requested by the Commissioner.

In those cases, the persons referred to in the second paragraph of section 255.7 must be invited to submit observations under the conditions provided for in that paragraph.

The admissibility conditions and processing procedure provided for in this subdivision apply to such applications or requests.”

12. This Act comes into force on the day of assent.