



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 53

(2009, chapter 50)

**An Act to create the office of
Commissioner for complaints concerning
mechanisms for the recognition of
professional competence**

**Introduced 10 June 2009
Passed in principle 30 September 2009
Passed 1 December 2009
Assented to 4 December 2009**

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EXPLANATORY NOTES

This Act provides for the creation of the office of Commissioner for complaints concerning mechanisms for the recognition of professional competence within the Office des professions du Québec. The Commissioner is to receive and examine complaints against professional orders concerning the mechanisms for the recognition of professional competence established within the professional orders. The Commissioner must also, among other functions, monitor the operation of such mechanisms.

Under the Act, the Office, in cooperation with the Ministère de l'Éducation, du Loisir et du Sport, is responsible for taking measures to encourage educational institutions and professional orders to collaborate so that if a professional order requires a person to acquire additional training, the training is offered by an educational institution. The Office is to report each year to the Government on the measures taken and make any recommendations it considers appropriate.

LEGISLATION AMENDED BY THIS ACT:

- Professional Code (R.S.Q., chapter C-26).

Bill 53

AN ACT TO CREATE THE OFFICE OF COMMISSIONER FOR COMPLAINTS CONCERNING MECHANISMS FOR THE RECOGNITION OF PROFESSIONAL COMPETENCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Professional Code (R.S.Q., chapter C-26) is amended by inserting the following after the heading of Chapter II:

“DIVISION I

“GENERAL PROVISIONS”.

2. Section 5 of the Code is amended by inserting “, the Commissioner for complaints concerning mechanisms for the recognition of professional competence” after “secretary”.

3. Section 12 of the Code, amended by sections 1 and 2 of chapter 11 of the statutes of 2008, is again amended by inserting the following subparagraphs after subparagraph 7 of the third paragraph:

“(7.1) take measures, in cooperation with the Ministère de l’Éducation, du Loisir et du Sport, to encourage educational institutions and professional orders to collaborate so that if a professional order requires a person to acquire training under a regulation made under paragraph *c*, *c.1* or *c.2* of section 93, paragraph *i* of section 94 as regards standards of equivalence, or paragraph *q* or *r* of that section, the training is offered by an educational institution;

“(7.2) report each year to the Government on the measures taken under subparagraph 7.1, making any recommendations it considers appropriate;”.

4. Section 16.1 of the Code is amended by inserting “, which must include the contents of the annual activity report mentioned in section 16.19” at the end of the first paragraph.

5. The Code is amended by inserting the following division after section 16.8:

“DIVISION II

“COMMISSIONER FOR COMPLAINTS CONCERNING MECHANISMS FOR THE RECOGNITION OF PROFESSIONAL COMPETENCE

“16.9. The office of Commissioner for complaints concerning mechanisms for the recognition of professional competence is created within the Office.

“16.10. The functions of the Commissioner are

(1) to receive and examine complaints against professional orders concerning the operation of the mechanisms for the recognition of professional competence;

(2) to monitor the operation of the mechanisms referred to in subparagraph 1; and

(3) to monitor the measures provided for in subparagraph 7.1 of the third paragraph of section 12 and, if necessary, to make the recommendations to the Office and the Ministère de l'Éducation, du Loisir et du Sport that the Commissioner judges appropriate, in particular concerning the time it takes before the training referred to in that subparagraph is offered.

In this Code, “mechanisms for the recognition of professional competence” means the mechanisms established within the professional orders under section 41, paragraphs 2, 2.1 and 3 of section 42, sections 42.1, 42.2 and 42.4, paragraphs *c*, *c.1* and *c.2* of section 93, paragraph *i* of section 94 as regards standards of equivalence, paragraphs *q* and *r* of that section and any sections of the Acts constituting the professional orders that concern the issue of restrictive or temporary permits.

“16.11. The Commissioner may conduct an inquiry in the exercise of the functions of office. In such cases, the Commissioner is vested with the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions, except the power to impose a term of imprisonment.

Section 14.3 applies, with the necessary modifications, to inquiries conducted by the Commissioner.

“16.12. The Commissioner shall establish a procedure for examining complaints.

“16.13. The Commissioner may, upon summary examination, dismiss a complaint if, in the Commissioner’s opinion, it is excessive, frivolous or clearly unfounded.

The Commissioner may refuse or cease to examine a complaint

(1) if the Commissioner has reasonable grounds to believe the Commissioner’s intervention would serve no purpose;

(2) if the plaintiff refuses or neglects to provide information or documents requested; or

(3) if the length of time having elapsed between the events that gave rise to the dissatisfaction of the plaintiff and the filing of the complaint makes it impossible to examine the complaint.

In such cases, the Commissioner must so inform the plaintiff and include the reasons for the decision, within a maximum of 30 days.

“16.14. If the Commissioner has not completed the examination of a complaint within 90 days after receiving it, the Commissioner must, at the end of that period, inform the plaintiff, in writing, that the examination has not been completed and report to the plaintiff on the progress of the examination. Until the examination has been completed, the Commissioner must, every 30 days after the expiry of the 90-day period, inform the plaintiff, in writing, that the examination has not been completed and report to the plaintiff on the progress of the examination.

“16.15. After examining a complaint, the Commissioner shall inform the plaintiff and, if necessary, the professional order concerned of the findings and send them any recommendations made, including any recommendation to review the application of the mechanisms for the recognition of professional competence.

Within 60 days after receiving a recommendation, the professional order shall inform the Commissioner in writing of the actions it intends to take as a result of the recommendation or, if it has decided not to act upon the recommendation, of the reasons for that decision.

“16.16. Answers given or statements made by a person during the examination of a complaint or the monitoring of the operation of the mechanisms for the recognition of professional competence, including any information or document supplied in good faith in response to a request by the Commissioner, may not be used or admitted as evidence against the person in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions.

“**16.17.** Nothing contained in a plaintiff’s complaint record or in a record relating to the monitoring of the operation of the mechanisms for the recognition of professional competence, including the conclusions and any related recommendations, may be construed as a declaration, recognition or extrajudicial admission of professional, administrative or other misconduct capable of establishing the civil liability of a party in a judicial proceeding.

“**16.18.** The Commissioner may require any professional order to furnish, within the time and in the manner the Commissioner specifies, any document, report or information the Commissioner needs to carry out the functions of office.

“**16.19.** The Commissioner shall file an activity report with the Office annually and, at the Office’s request, at any other time.

The annual activity report must include the number, nature and outcome of the complaints examined by the Commissioner, the actions taken by the Commissioner to monitor the operation of the mechanisms for the recognition of professional competence, the Commissioner’s conclusions, any recommendations made, and the steps taken further to such recommendations.

“**16.20.** The Office shall take steps to preserve at all times the independence of the Commissioner in the exercise of the functions of office.

“**16.21.** Nothing in this division may be construed as conferring on the Commissioner jurisdiction over the decisions made by a professional order.”

6. This Act comes into force on 4 December 2009.