



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 75

(2009, chapter 59)

An Act to amend the Police Act as regards cross-border policing

Introduced 17 November 2009
Passed in principle 24 November 2009
Passed 2 December 2009
Assented to 4 December 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act amends the Police Act to allow police officers to be granted cross-border powers, and to determine which police ethics system is to apply to officers with such powers.

To that end, it establishes a process by which an authorizing official designated by the Minister of Public Security may authorize a police officer of another province or a territory of Canada to perform police duties in Québec. The authorizing official sets the duration of the authorization and specifies the duties the police officer is authorized to perform as well as the area in which and the conditions subject to which he or she is to perform them. The authorization may be terminated at any time by the authorizing official.

Under the Act, a police officer from another jurisdiction, while performing duties in Québec within the limits set out in his or her written authorization, has all the powers and protections enjoyed by Québec police officers.

As regards police ethics, the Act stipulates that a person may lodge a complaint with Québec's Police Ethics Commissioner about the conduct in Québec of a police officer from another jurisdiction, but that the Commissioner may impose no penalty under the Police Act on such an officer. The Act sets out how the Commissioner is to deal with such complaints and what information the Commissioner must send to the authority that would normally deal with the complaint in the police officer's home province or territory.

In addition, the Act provides that a Québec police officer may be authorized by the competent authority of another province or a territory of Canada to perform police duties in that province or territory, and that the Police Act continues to apply to such a police officer in the performance of duties in that province or territory. If a complaint is lodged against a Québec police officer in that province or territory, it may be referred to Québec's Police Ethics Commissioner, who will deal with it as if the police officer's conduct that is the subject of the complaint had occurred in Québec.

Lastly, the Act contains provisions on reciprocal indemnification, by the authorities responsible for the police forces concerned, for costs arising from the exercise of cross-border policing powers.

LEGISLATION AMENDED BY THIS ACT:

- Police Act (R.S.Q., chapter P-13.1).

Bill 75

AN ACT TO AMEND THE POLICE ACT AS REGARDS CROSS-BORDER POLICING

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

I. The Police Act (R.S.Q., chapter P-13.1) is amended by inserting the following chapter after section 104:

“CHAPTER I.1

“CROSS-BORDER POWERS OF POLICE OFFICERS

“DIVISION I

“POLICE OFFICERS OF ANOTHER PROVINCE OR A TERRITORY OF CANADA

“§1. — *Authorization procedure*

“**104.1.** A police officer of another province or a territory of Canada may be authorized to perform police duties in Québec in accordance with this division by an authorizing official designated by the Minister.

The Minister may, by directive, determine how the powers and duties of an authorizing official are to be exercised.

“**104.2.** A request for authorization is made by the director of the police force of which the police officer is a member or by a person designated by the director of that police force.

The request must be made in writing. In urgent circumstances, the request may be made orally and must specify the reasons why it cannot be made in writing.

In all cases, the request must include the following information:

(1) the name, date of birth, rank, badge number and contact information of the police officer;

(2) the name, title and contact information of the person making the request;

(3) the duration of the requested authorization;

(4) the reasons for the request, a general description of the police officer's duties in Québec and the area where the police officer is expected to perform those duties;

(5) an assessment of the risks associated with the police officer's duties, including the possibility of firearms being used.

“104.3. The authorizing official shall review the request and shall, to that end, consult the director of the police force, or the officer in charge of the Sûreté du Québec police station, in the area where the police officer is expected to perform duties. The authorizing official may also require any additional information from the person making the request.

“104.4. The authorizing official must make a decision within 10 days after receiving the request for authorization or as soon as possible if the request is made in urgent circumstances.

If the authorizing official is of the opinion that it is appropriate to grant the request, he or she shall draw up a written authorization; otherwise, he or she shall advise the person who made the request that it has been denied.

“104.5. The duration of the authorization may not exceed three years.

However, if the authorization is granted in urgent circumstances, its duration may not exceed 72 hours. It may be renewed once if a request has been made in writing beforehand.

“104.6. The written authorization, in the form determined by the Minister, must include the following information:

(1) the name, rank, badge number of the police officer and the name of the police force of which he or she is a member;

(2) the effective date and time of the authorization and its duration;

(3) the duties the police officer is authorized to perform;

(4) the area where the police officer is authorized to perform those duties;

(5) the conditions imposed on the performance of those duties, including the name of the police force under whose authority the police officer is to perform them.

“104.7. Before the effective date of the written authorization and not later than five days after drawing it up, the authorizing official shall send two copies to the person who made the request for authorization, who must give one of them to the authorized police officer. The authorizing official shall also issue proof of authorization to the police officer.

The authorizing official shall send a copy of the written authorization to the Minister and to the police force under whose authority the police officer is to perform duties.

If the authorization is granted in urgent circumstances and is to become effective before the person who made the request or the police officer receives a copy of the written authorization, the authorizing official shall orally inform that person of the information contained in the written authorization so that he or she may inform the authorized police officer.

“§2. — *Authorized police officer’s status and duties*

“**104.8.** An authorized police officer, while performing duties in Québec, has all the powers and protections conferred on Québec police officers, subject to the limits set out in his or her written authorization.

“**104.9.** An authorized police officer does not, by virtue of the authorization granted to him or her, become an employee or member of a Québec police force. The police officer continues at all times to be a member of the police force of his or her home province or territory.

However, for the purposes of section 25.1 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) and section 55 of the Controlled Drugs and Substances Act (Statutes of Canada, 1996, chapter 19) as they relate to justification for acts or omissions that could otherwise constitute offences, an authorized police officer is deemed to be a member of the police force under whose authority he or she performs duties in Québec.

“**104.10.** An authorized police officer must carry proof of authorization with him or her at all times while performing duties in Québec and show it on request, unless exempted from doing so by the terms of the authorization.

“**104.11.** An authorized police officer must provide the director of the police force or the officer in charge of the Sûreté du Québec police station under whose authority the authorized police officer performs duties, or the representative of the director or officer in charge, with any information that person requires on the duties performed by the police officer in Québec and any other information the authorized police officer considers relevant.

The authorized police officer must also comply with any directions given to him or her by that person regarding the performance of those duties.

“§3. — *Termination of authorization*

“**104.12.** An authorizing official may at any time terminate a police officer’s authorization, including

(1) if the authorized police officer has failed to comply with a condition imposed on his or her authorization or with a provision of this Act that applies to him or her;

(2) if the authorized police officer has failed to act in a professional manner in the performance of duties in Québec.

The authorizing official must terminate the authorization on receiving a request that it be terminated from the director of the police force of which he or she is a member, or a person designated by the director of that police force.

“104.13. The authorizing official shall give written notice of the termination to the police officer concerned and to the director of the police force of which he or she is a member. The termination is effective on the date and at the time specified in the notice.

The authorizing official shall also send a copy of the notice of termination to the Minister and to the police force under whose authority the police officer performed or was to perform duties.

“DIVISION II

“QUÉBEC POLICE OFFICERS

“104.14. A Québec police officer may be authorized by the competent authority of another province or a territory of Canada to perform police duties in that province or territory.

Unless special provisions apply, a Québec police officer so authorized continues to be subject to this Act while performing duties in that province or territory.

“104.15. A Québec police officer authorized to perform duties in another province or a territory of Canada must cooperate in any investigation, hearing or other proceeding underway in that province or territory concerning his or her conduct or an operation in which he or she participated in that province or territory, subject to the rights and privileges a police officer of that province or territory would have in the same situation.

If a Québec police officer is the subject of such a proceeding, the police force of which he or she is a member shall, on request, provide the competent person with all the relevant information and documents in its possession, subject to the rights and privileges a police force of that province or territory would have in the same situation.

“104.16. No statement or deposition made by a Québec police officer in the course of a proceeding referred to in section 104.15 may be used without his or her consent in police ethics or discipline proceedings instituted under this Act.

“DIVISION III**“INDEMNIFICATION**

“104.17. The competent authority in respect of a Québec police force may enter into an agreement with the competent authority in another province or a territory of Canada regarding indemnification for costs arising out of the authorization granted a Québec police officer to perform police duties in that province or territory or the authorization granted a police officer of that province or territory to perform police duties in Québec.

Subject to such an agreement, the competent authority in respect of a Québec police force shall indemnify the competent authority in that province or territory against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred in respect of a civil, penal, criminal or administrative action or proceeding, if the police force of that province or territory is a party to the action or proceeding and the action or proceeding arises out of the duties performed in that province or territory by an authorized police officer who is a member of the Québec police force.”

2. Section 126 of the Act, replaced by section 14 of chapter 10 of the statutes of 2008, is amended by inserting the following paragraph after the first paragraph:

“However, only subdivision 4 of Division II applies to a police officer of another province or a territory of Canada who performs duties in Québec by virtue of cross-border powers.”

3. Section 128 of the Act is amended by replacing “section 143” in the first paragraph by “section 143 or 143.1 or subdivision 4, as applicable”.

4. The Act is amended by inserting the following section after section 143:

“143.1. A complaint about the conduct of a Québec police officer, in the performance of duties in another province or a territory of Canada, that constitutes a transgression of the Code of ethics may be referred to the Commissioner even if it has been lodged in that province or territory. In the latter case, the director of the police force of which the police officer is a member, on being notified that such a complaint has been lodged, must inform the Commissioner and forward the documents received, if any, to the Commissioner.

The Commissioner shall deal with such a complaint as if the police officer’s conduct had occurred in Québec.”

5. Section 149 of the Act is amended by replacing “and the director of the police force concerned” in paragraph 4 by “, the director of the police force concerned and, in the case of a complaint about the conduct of a Québec police officer in another province or a territory of Canada, the competent authority with which the complaint has been lodged in that province or territory,”.

6. Section 169 of the Act is amended by replacing “and the police officer whose conduct is the subject-matter of the complaint” by “, the police officer whose conduct is the subject-matter of the complaint and, in the case of a complaint about the conduct of a Québec police officer in another province or a territory of Canada, the competent authority with which the complaint has been lodged in that province or territory”.

7. Section 170 of the Act is amended by replacing “and the director of the police force to which he belongs” in the second paragraph by “, the director of the police force of which he or she is a member and, in the case of a complaint about the conduct of a Québec police officer in another province or a territory of Canada, the competent authority with which the complaint has been lodged in that province or territory”.

8. Section 176 of the Act is amended by replacing “three” by “six”.

9. Section 177 of the Act is amended by adding the following paragraph at the end:

“If a complaint about a Québec police officer has been lodged with the competent authority of another province or a territory of Canada and the competent authority has produced a report about the officer’s conduct in that province or territory, the Commissioner may ask the competent authority to conduct a supplementary investigation.”

10. Section 179 of the Act is amended by replacing “and the director of the police force to which he belongs,” in the first paragraph by “, the director of the police force of which he or she is a member and, in the case of a complaint about the conduct of a Québec police officer in another province or a territory of Canada, the competent authority with which the complaint has been lodged in that province or territory,”.

11. The Act is amended by inserting the following subdivision after section 193:

“§4. — *Complaints about the conduct in Québec of police officers of another province or a territory of Canada*

“**193.1.** Any person may lodge a complaint with the Commissioner about the conduct of a police officer of another province or a territory of Canada in the performance of duties in Québec that were authorized under Division I of Chapter I.1 of Title II. The complaint must be in writing.

Sections 144, 150 to 154, 156 to 162, 164, 165, 171, 173, 174, 176 and 189 to 193 apply, with the necessary modifications, to such a complaint.

“**193.2.** The Commissioner shall inform the complainant of the procedure for dealing with complaints about the conduct in Québec of police officers of another province or a territory of Canada.

The Commissioner shall also inform the complainant that no penalty may be imposed on such a police officer under this Act and give the complainant the contact information of the authority that would normally deal with the complaint in the police officer's home province or territory.

“193.3. Within 20 days after the receipt of the complaint, a copy of the complaint and the evidence collected is forwarded to the authority that would normally deal with the complaint in the police officer's home province or territory and to the authorizing official concerned.

“193.4. The Commissioner may submit the complaint to conciliation, deal with it under the Commissioner's authority if it relates to a case described in section 148, or reject it.

“193.5. Within 60 days after the receipt of the complaint or the identification of the police officer concerned, the Commissioner must, after a preliminary analysis of the complaint,

(1) decide whether the complaint is to be dealt with under the Commissioner's authority or must be rejected;

(2) refer the complaint to the appropriate police force for the purposes of a criminal investigation if it appears to the Commissioner that a criminal offence may have been committed;

(3) where applicable, designate a conciliator and forward the file;

(4) inform the complainant, the authority that would normally deal with the complaint in the police officer's home province or territory and the authorizing official concerned of the Commissioner's decision to refer the complaint to conciliation, to deal with it under the Commissioner's authority or to reject it.

The authorizing official shall then inform the police officer concerned and the director of the police force of which he or she is a member of the substance of the complaint, of the facts enabling the event that gave rise to the complaint to be identified and of the Commissioner's decision.

“193.6. The Commissioner, taking all circumstances into account, including the nature and gravity of the facts alleged in the complaint, may order the holding of an investigation.

The Commissioner may refuse to hold an investigation or may terminate an investigation if, in the Commissioner's opinion,

(1) the complaint is frivolous, vexatious or made in bad faith;

(2) the complainant without valid reasons refuses to participate in the conciliation procedure or refuses to cooperate in the investigation;

(3) having regard to all circumstances, investigation or further investigation is not necessary.

“193.7. The Commissioner shall notify, in writing, the complainant, the authority that would normally deal with the complaint in the police officer’s home province or territory and the authorizing official concerned of any decision under section 193.6, including reasons. The Commissioner shall also inform the complainant of the complainant’s right to obtain a review of the decision by submitting new facts or elements to the Commissioner within 15 days. The Commissioner shall make a decision on a review within 10 days and the decision is final.

The authorizing official shall notify, in writing, the police officer and the police force of which he or she is a member of the Commissioner’s decision.

“193.8. Not later than 45 days after deciding to hold an investigation, and afterwards as needed during the course of the investigation, the Commissioner shall notify, in writing, the complainant, the authority that would normally deal with the complaint in the police officer’s home province or territory and the authorizing official concerned of the status of the investigation, unless, in the Commissioner’s opinion, to do so might adversely affect the investigation.

The authorizing official shall send a copy of the notice to the police officer concerned and the director of the police force of which he or she is a member.

“193.9. The Commissioner shall send the investigation report to the authority that would normally deal with the complaint in the police officer’s home province or territory and the authorizing official concerned. The Commissioner may conduct a supplementary investigation on the authority’s request.

The Commissioner shall notify the complainant in writing that the investigation is completed and that the report has been sent to the authority.

Once the report has been sent or the supplementary investigation is completed, the Commissioner’s jurisdiction over the complaint terminates.

“193.10. The Commissioner shall, at the Minister’s request, hold an investigation in accordance with this subdivision on the conduct in Québec of a police officer of another province or a territory of Canada.”

12. Section 236 of the Act is amended by adding the following paragraph at the end:

“If the decision pertains to the conduct of a Québec police officer in another province or a territory of Canada, the Commissioner shall send a copy of the decision as soon as possible to the authority with which the complaint was lodged in that province or territory.”

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