



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 83

(2010, chapter 12)

**An Act to provide a framework for
mandatory state financing of certain
legal services**

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Assented to 4 June 2010**

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EXPLANATORY NOTES

This Act amends the Legal Aid Act in order to create a framework for the legal services provided accused persons involved in certain long and complex trials and those provided when certain court orders concerning the designation of counsel are made under the Criminal Code.

To that end, the management of the provision of the legal services provided in such cases is entrusted to the Commission des services juridiques and to regional legal aid centres, the pool of advocates available to render the services is increased, a new tariff of fees applicable to those services is established, and rules are drawn up for determining the contribution and guarantees that may be required of certain accused persons and for recovering, in certain cases, the cost of the services rendered.

LEGISLATION AMENDED BY THIS ACT:

- Legal Aid Act (R.S.Q., chapter A-14).

REGULATION AMENDED BY THIS ACT:

- Regulation respecting legal aid (Order in Council 1073-96 dated 28 August 1996).

Bill 83

AN ACT TO PROVIDE A FRAMEWORK FOR MANDATORY STATE FINANCING OF CERTAIN LEGAL SERVICES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The title of the Legal Aid Act (R.S.Q., chapter A-14) is replaced by the following title:

“ACT RESPECTING LEGAL AID AND THE PROVISION OF CERTAIN OTHER LEGAL SERVICES”.

2. The Act is amended by inserting the following after the title:

“CHAPTER I

“SCOPE AND DEFINITIONS

“0.1. This Act establishes a legal aid system in Chapter II and provides for certain other legal services in Chapter III.

For those purposes, the Act provides in Chapter II for the establishment and operation of bodies that are to render legal services under this Act, and in Chapter IV for the implementation of Chapters II and III.”

3. The Act is amended by striking out the following before section 1:

“DIVISION I

“INTERPRETATION”.

4. Section 1 of the Act is amended by striking out paragraphs *a*, *b* and *i*.

5. The Act is amended by inserting the following after section 1:

“CHAPTER II

“LEGAL AID SYSTEM

“DIVISION I

“DEFINITIONS

“1.0.1. For the purposes of this chapter, unless the context indicates otherwise, the following words mean:

(1) “recipient”: a person who receives legal aid;

(2) “person”: a natural person or group of natural persons or a non-profit legal person whose members are natural persons financially eligible for legal aid.”

6. Section 3 of the Act is amended by replacing “Act” by “chapter”.

7. Section 3.1 of the Act is amended by replacing “established by this Act” by “established by this chapter”.

8. Section 3.2 of the Act is amended by replacing “For the purposes of this Act, the” by “The”.

9. Section 4.5 of the Act is amended

(1) by replacing “Young Offenders Act (Revised Statutes of Canada, 1985, chapter Y-1)” in paragraph 2 by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”;

(2) by replacing “Extradition Act (Revised Statutes of Canada, 1985, chapter E-23) or the Fugitive Offenders Act (Revised Statutes of Canada, 1985, chapter F-32)” in paragraph 5 by “Extradition Act (Statutes of Canada, 1999, chapter 18)”.

10. Section 4.10 of the Act is amended by replacing “Young Offenders Act (Revised Statutes of Canada, 1985, chapter Y-1)” in subparagraph *b* of paragraph 1 by “Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1)”.

11. Section 5 of the Act is amended

(1) by adding “, and expenses of the advocate or notary” at the end of subparagraph *a* of the first paragraph;

(2) by inserting “and expenses” after “fees” in subparagraph *c* of the first paragraph.

12. Section 6 of the Act is replaced by the following section:

“6. Subject to the regulations, the fees and expenses of an advocate or notary not in the employ of a centre or of the Commission, whose services have been retained by the centre or the Commission on behalf of a recipient, and the fees and expenses of a stenographer or bailiff acting on behalf of a recipient shall be paid by the centre or the Commission, whichever granted legal aid to the recipient, in accordance with the tariffs established by the regulations.”

13. Section 22 of the Act is amended

(1) by replacing “Act” in paragraph *a* by “chapter”;

(2) by replacing “Act” in paragraph *d.1* by “chapter”.

14. Section 22.1 of the Act is amended by replacing the first paragraph by the following paragraph:

“22.1. The Commission shall publish, in particular so as to facilitate a coherent application of this chapter and the regulations, a periodic bulletin containing general or special information concerning the application of this chapter and the regulations. The bulletin may also report the decisions made under this chapter.”

15. The Act is amended by inserting the following sections after section 23:

“23.1. Section 24 of the Public Service Act (chapter F-3.1.1) applies, with the necessary modifications, with regard to an advocate or a notary in the full-time employ of the Commission.

“23.2. No deed, document or writing binds the Commission or can be attributed to it unless signed by the chairman, the secretary or an employee of the Commission, and then only to the extent determined by regulation of the board of directors.

However, the signature of an advocate or a notary in the employ of the Commission binds the Commission in all cases where it relates to the performance of the professional duties of the advocate or notary on behalf of a recipient.”

16. Section 32 of the Act is amended by replacing both occurrences of “Act” by “chapter”.

17. Section 32.2 of the Act is repealed.

18. The Act is amended by replacing the heading of subdivision 6 of Division V by the following heading:

“DIVISION V.1

“PROFESSIONAL SERVICES”.

19. Section 50 of the Act is amended

(1) by replacing “Act” in the first paragraph by “chapter”;

(2) by replacing “subdivision” in the second paragraph by “division”.

20. Section 59 of the Act is replaced by the following section:

“59. An advocate in the full-time employ of a centre or the Commission shall exercise the functions of office exclusively for the centre or, if applicable, for the Commission, except in exceptional cases with the approval of the centre or the Commission and in accordance with the regulations.”

21. Section 60 of the Act is amended by inserting “or the Commission” after “legal aid centre” in the first paragraph.

22. Section 61 of the Act is amended

(1) by inserting “or the Commission” after “of a centre” in the first paragraph;

(2) by replacing “to such centre” in the first paragraph by “to the centre or, if applicable, to the Commission”;

(3) by replacing “centre which employs him” in the second paragraph by “centre that employs him or the Commission”.

23. The Act is amended by inserting the following section after section 61:

“61.1. In a penal or criminal case that is expected to be long and complex owing, among other things, to the anticipated length of the trial, the number of accused, the number and nature of the accusations, the nature of the evidence, the time required to hear the preliminary motions, whether announced or anticipated, as mentioned in the minutes of the pre-hearing conference or the court record, or owing to the length of the investigation leading to the laying of charges, only the Commission shall decide whether a recipient may benefit from the professional services of an advocate in accordance with sections 83.3 to 83.7 and 83.9 to 83.12, and, if so, what the fee structure applicable to the advocate’s services is to be.

Sections 56 and 57 do not apply for the purposes of this section.”

24. Section 67 of the Act is amended by inserting “or the Commission” after “legal aid centre” in subparagraphs 1 and 2 of the second paragraph.

25. Section 74 of the Act is amended by inserting “or the Commission” after “legal aid centre” in subparagraphs 1 and 2 of the third paragraph.

26. The heading of Division VII of the Act is amended by striking out “AND TARIFFS OF FEES”.

27. Section 80 of the Act is amended

(1) by replacing “Act and” in the introductory clause by “chapter, unless the context requires a different meaning,”;

(2) by replacing “Act” in subparagraphs *b.1* and *e* of the first paragraph by “chapter”;

(3) by inserting “, for the purposes of this Act,” after “determine” in subparagraphs *g* and *m* of the first paragraph, after “establish” in subparagraph *i* of the first paragraph, after “prescribe” in subparagraph *k* of the first paragraph, and after “fix” in subparagraph *j* of the first paragraph;

(4) by replacing subparagraph *p* of the first paragraph by the following subparagraph:

“(p) determine the cases where, despite this chapter, the fees and expenses of advocates and notaries not in the employ of a centre or the Commission, whose professional services are retained on behalf of a recipient, are paid by the centre or the Commission;”;

(5) by adding the following subparagraphs after subparagraph *t* of the first paragraph:

“(u) determine how an advocate or notary must report to the Commission under this Act concerning the fees and expenses relating to the legal services rendered, when the report must be made, and the exceptional cases in which no such report is required;

“(v) determine the rules applicable to the payment of fees and expenses by the Commission, including the date on which prescription of a claim relating to a statement of fees and expenses payable by a centre or the Commission under this Act begins to run.”;

(6) by replacing “were rendered by an advocate or notary in the employ of a legal aid centre or by an advocate or notary not in the employ of a legal aid centre” in the second paragraph by “were rendered by an advocate or notary in the employ of a legal aid centre or the Commission or by an advocate or notary not in the employ of a legal aid centre or the Commission”;

(7) by replacing “, *q*, *r*, *s* and *t*” in the third paragraph by “and *q* to *v*”;

(8) by inserting “under this chapter” after “regulations” in the fourth paragraph.

28. Sections 80.1, 80.2 and 81 of the Act are repealed.

29. Division VIII of the Act, comprising sections 82 and 82.1, is repealed.

30. The Act is amended by inserting the following after section 83:

“CHAPTER III

“PROVISION OF CERTAIN LEGAL SERVICES OTHER THAN LEGAL AID

“83.1. In addition to the functions and duties assigned to it by Chapter II, the Commission des services juridiques must see that legal services are provided to the accused in a penal or criminal trial whose right to the services of a State-remunerated advocate, arising from their constitutional right to a fair trial, has been recognized by a court order.

The Commission must also see that such services are provided if a court order concerning the designation of counsel has been made under the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46), in particular under section 486.3 or 672.24, subsections 8 to 8.2 of section 672.5, section 684 or section 694.1 of that Code.

“83.2. The principles set out in section 3.2 apply with the necessary modifications to the management and provision of legal services under this chapter, regardless of the financial eligibility of the persons concerned.

Sections 60 and 61 apply in respect of a service rendered by an advocate under this chapter, with the necessary modifications.

“83.3. The Commission, in collaboration with the regional centres, shall take the necessary measures to ensure the coherent application of this chapter.

“83.4. A director general must notify the Commission without delay on being informed of facts referred to in section 61.1 or 83.1. In the case described in section 61.1, the director general’s notice may include a recommendation, which is not binding on the Commission.

The Commission shall inform the director general of any similar fact it is aware of.

“83.5. The director general of the regional centre serving the place where a proceeding or trial is being or is to be held shall exercise the functions assigned to the director general under Chapter II.

“83.6. The director general must entrust the provision of legal services to an advocate not in the employ of a regional centre if a person to whom section 61.1 or 83.1 applies chooses that particular advocate and the advocate agrees to provide professional services to that person for the fee determined by the Commission under the first paragraph of section 83.12.

Failing that, the director general must make available the professional services of an advocate in the employ of the regional centre.

This section does not apply if a court order has been made under section 486.3 of the Criminal Code.

“83.7. Subject to section 83.8, if a person to whom section 61.1 or 83.1 applies has not chosen any particular advocate under section 52 or 83.6 or the advocate does not agree to provide professional services in accordance with the regulations and the director general is not able to make available the professional services of an advocate in the employ of the regional centre, the director general shall call upon the Commission, which must procure for the person the professional services of

(1) an advocate not in the employ of a regional centre or the Commission, who agrees to provide professional services for the fee determined by the Commission under the first paragraph of section 83.12;

(2) an advocate in the employ of the Commission; or

(3) an advocate in the employ of a regional centre, with whom the regional centre has entered into a loan of services agreement in accordance with section 83.11.

As far as possible, a recipient may select the advocate of the recipient's choice.

Despite the first paragraph, the Commission may, by way of exception, enter into a professional services contract with an advocate not in the employ of a regional centre or the Commission, if the advocate's expertise is required for the Commission to satisfy its duties under the first paragraph of section 83.1 or if such a contract will ensure efficient management of services and resources.

“83.8. For the purposes of an order made under section 486.3 of the Criminal Code, the selection of counsel must alternate, insofar as possible, between an advocate referred to in subparagraph 1 of the first paragraph of section 83.7 and an advocate referred to in the second paragraph of section 83.6 or in subparagraph 2 or 3 of the first paragraph of section 83.7.

“83.9. Subject to the regulations, an advocate who provides professional services under this chapter must personally carry out all the essential aspects of those services.

“83.10. The Commission shall draw up and keep up to date, for all of Québec, a list of the advocates described in subparagraph 1 of the first paragraph of section 83.7 and send a copy of it to each regional centre.

The Commission shall make the list available to the public.

“83.11. The director general of the regional centre serving the place where a proceeding or trial is being or is to be held may enter into an agreement with the director general of another regional centre providing for the loan of the services of a member of the personnel of their respective centres.

The Commission is party to the agreement.

The agreement may also provide for the loan of the services of a member of the personnel of the Commission, or the assignment to a regional centre of an advocate bound to the Commission by a professional services contract.

“83.12. In the cases described in the first paragraph of section 83.6 and subparagraph 1 of the first paragraph of section 83.7, the Commission shall determine, under the tariff applicable under section 83.21, the fee payable to the advocate of a person to whom section 61.1 or the first paragraph of section 83.1 applies.

The Commission shall establish, by regulation, the main criteria on which a decision under the first paragraph is to be based, having regard to the circumstances of the matter. The regulation is subject to the approval of the Government, which may approve it with or without amendment.

The Commission must notify the director general of its decision without delay.

The Commission’s decision is not subject to review by the committee formed under paragraph *k* of section 22.

“83.13. An accused person described in the first paragraph of section 83.1 is required to pay the amount of the contribution that the person has undertaken to pay. The person is also required to provide any guarantee the person has undertaken to provide.

Guarantees are established in favour of the Commission.

“83.14. An accused person described in the first paragraph of section 83.1 must pay the contribution to the person’s advocate if the advocate is not in the employ of a regional centre or the Commission.

The entire contribution that an accused person described in the first paragraph of section 83.1 has undertaken to pay must be used by an advocate referred to in the first paragraph of section 83.6 or in subparagraph 1 of the first paragraph of section 83.7, in keeping with the fee determined by the Commission under the first paragraph of section 83.12, before the advocate may claim other fees from the Commission.

“83.15. An accused person described in the first paragraph of section 83.1 must pay the contribution to the Commission if the person’s advocate is in the employ of a centre or the Commission.

“83.16. An accused person described in the first paragraph of section 83.1 who, owing to a false declaration, should not have benefited from certain legal services under this chapter, is required to repay the cost of those legal services to the Commission.

For the purposes of the first paragraph, when the services rendered are rendered by an advocate referred to in subparagraph 2 or 3 of the first paragraph or in the third paragraph of section 83.7, they are deemed to have been paid under the first paragraph of section 83.12, in keeping with the fee determined by the Commission.

“83.17. The Government may, by regulation, determine what the cost of the legal services referred to in section 83.16 includes.

“83.18. The Commission may, by regulation,

(1) determine the cases in which the fees and expenses of advocates not in the employ of a centre or the Commission, whose services are retained following an order under section 83.1, are paid by a centre or by the Commission;

(2) determine the form and content of the document confirming entitlement to legal services under this chapter;

(3) determine the place where a person wishing to obtain legal services must send an application and prescribe rules in that regard; and

(4) determine the manner in which the list provided for in section 83.10 is drawn up and kept up to date, as well as the information it must contain.

The regulations of the Commission are subject to the approval of the Government, which may approve them with or without amendment.

“CHAPTER IV**“COMMON PROVISIONS****“DIVISION I****“GENERAL PROVISIONS**

“83.19. Subject to a collective agreement, the Commission des services juridiques shall determine, by by-law, the standards and scales of remuneration of its personnel and the personnel of the regional centres in accordance with the conditions defined by the Government.

“83.20. For the purposes of the Pay Equity Act (chapter E-12.001), the Commission and the regional centres are deemed to be a single enterprise and the Commission is considered to be the employer of the employees of the regional centres.

Despite section 11 of the Pay Equity Act, there may be only one pay equity plan for all the employees of the Commission and the regional centres.

“83.21. With the approval of the Conseil du trésor, the Minister may enter into an agreement with the bodies authorized to represent notaries, advocates, bailiffs or stenographers concerning the tariffs of fees applicable for the purposes of this Act as well as a procedure for the settlement of disputes and the matters to which the procedure may apply. The agreement has force of law, takes effect on the date of its publication in the *Gazette officielle du Québec*, and ceases to have effect on the date specified in the agreement.

Failing an agreement under the first paragraph, the Minister, with the approval of the Conseil du trésor, may make a regulation concerning the matters that may be covered by an agreement and specifying the date on which the regulation ceases to have effect.

A tariff of fees set under this section may include, to the extent it prescribes, a flat fee for all the legal services provided under a single mandate. It may determine the maximum amount of fees that may be paid under this Act to the same professional in the course of a period specified by the tariff and beyond which fees paid to the professional are to be reduced, in respect of each mandate, in the proportion specified by the tariff. The provisions of the tariff of fees pertaining to the maximum amount of fees that may be paid to the same professional may vary according to the class of professionals to which they apply. The tariff may also specify who may determine the fee payable for a service not included in the tariff or, in certain cases, excess fees payable, and set the conditions under which that determination may be made.

The tariff of fees may determine travel compensation and other eligible expenses or specify who may determine them, or refer to the applicable regulation or directive.

An agreement or regulation remains in force after the date on which it ceases to have effect until it is replaced by a new agreement or regulation.

A new agreement or regulation may be retroactive to a date not prior to the date on which the replaced instrument was to cease to have effect. If an amendment is made while an instrument is in effect, it may be retroactive to a date not prior to the instrument's initial effective date.

“83.22. The Commission may make an agreement with an association of experts as to the fees and expenses to which experts are entitled when acting under this Act. The agreement applies throughout Québec.

If no such agreement has been made with an association, a regional centre or a group of regional centres may make an agreement with an association of experts or with individuals who agree to act as expert witnesses. The agreement applies throughout Québec or in the regions specified in the agreement.

If an agreement has been made, a centre may not, except where no expert to which the agreement applies is able to act, pay fees or expenses for expert testimony in excess of those stipulated in the agreement.

In the absence of an agreement or if no expert to whom the agreement applies is able to act, the director general shall set the amount of the fees and expenses payable to experts.

“DIVISION II

“PENAL PROVISIONS

“83.23. A person is guilty of an offence and is liable to a fine of not less than \$800 and not more than \$10,000 in the case of a natural person and of not less than \$2,500 and not more than \$62,000 in the case of a legal person who knowingly makes a false or misleading statement or knowingly transmits a document containing false or misleading information so as to

- (1) become or remain eligible for legal aid under Chapter II;
- (2) make a family member eligible or remain eligible for that legal aid; or
- (3) help another person to obtain legal aid to which that person is not entitled.

“83.24. An advocate or notary who receives a sum of money or any other advantage not provided for by this Act, in contravention of section 60 or the second paragraph of section 61, is guilty of an offence and is liable to a fine of not less than \$2,000 and not more than \$32,000.

83.25. An advocate or notary described in the first paragraph of section 61 who fails to remit to the centre or the Commission that employs the advocate or notary the fees and expenses collected pursuant to a judgment or transaction is guilty of an offence and is liable to a fine of not less than \$2,000 and not more than \$32,000.

83.26. A person who refuses or neglects to supply any information or document requested under section 64 is guilty of an offence and is liable to a fine of not less than \$500 and not more than \$5,000 in the case of a natural person, and of not less than \$1,500 and not more than \$30,000 in the case of a legal person.”

31. This Act is amended by replacing the headings of Division IX by the following headings:

“DIVISION III

“MISCELLANEOUS PROVISIONS”.

CONSEQUENTIAL, TRANSITIONAL AND FINAL PROVISIONS

32. The Regulation respecting legal aid, enacted by Order in Council 1073-96 dated 28 August 1996, is amended by inserting the following section before section 1:

“0.1. This Regulation applies to persons eligible for legal aid under Chapter II of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14).”

33. Section 1 of the Regulation is amended by replacing “81 of that Act” by “83.21 of that Act and, in the case of a recipient to whom section 61.1 of the Act respecting legal aid and the provision of certain other legal services applies, in accordance with any determination made by the Commission des services juridiques under the first paragraph of section 83.12 of that Act”.

34. In any other Act, a reference to the Legal Aid Act (R.S.Q., chapter A-14) or to any of its provisions becomes a reference to the Act respecting legal aid and the provision of certain other legal services or to the corresponding provision of that Act.

The same applies to any regulation, order in council, order or document, unless the context indicates otherwise.

35. Provided they are made in the year 2010, the first regulation made under subparagraphs *u* and *v* of the first paragraph of section 80 of the Act respecting legal aid and the provision of certain other legal services and the first regulation made under section 83.17 of that Act are not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1). Despite section 17 of that Act, the regulations come into

force on the date of their publication in the *Gazette officielle du Québec* or on any later date set in the regulations and their provisions may have effect from any date not prior to 4 June 2010.

36. Provided they are made in the year 2010, the first regulation made under subparagraph *c, d, e, g, i, j, k, m, n* or *p* of the first paragraph of section 80 of the Act respecting legal aid and the provision of certain other legal services after the coming into force of this section, the first regulation made under the second paragraph of section 83.12 and the first regulation made under section 83.18 of that Act are made by the Government and are not subject to the publication requirement set out in section 8 of the Regulations Act. Despite section 17 of that Act, the regulations come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date set in the regulations and their provisions may have effect from any date not prior to 4 June 2010.

37. Provided it is made in the year 2010, the first regulation made under the second paragraph of section 83.21 of the Act respecting legal aid and the provision of certain other legal services may be enacted even if it is not published in the *Gazette officielle du Québec*.

38. The provisions of this Act come into force on the date or dates to be set by the Government.

