



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 12

(2013, chapter 6)

An Act to amend the Police Act as concerns independent investigations

Introduced 29 November 2012
Passed in principle 20 March 2013
Passed 9 May 2013
Assented to 15 May 2013

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EXPLANATORY NOTES

This Act amending the Police Act makes the conduct of an independent investigation mandatory in every case where a person, other than an on-duty police officer, dies, sustains a serious injury or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody.

It establishes an investigation bureau, known as the Bureau des enquêtes indépendantes, whose mission is to conduct independent investigations and any investigation entrusted to it, in exceptional cases, by the Minister of Public Security on any other occurrence involving a peace officer and related to the officer's functions or on criminal offence allegations made against a peace officer.

The Bureau is a police force for the purposes of the pursuit of its mission. It is composed of a director, an assistant director and investigators appointed by the Government. This Act sets out rules applicable to the appointment and selection of the members of the Bureau as well as the minimum requirements they must meet to be appointed and exercise their functions.

The director of a police force that provides level 4 services or services of a higher level must make available to the Bureau the support services and police officers requested by the director of the Bureau. To that end, the director of a police force and any other member or employee of the police force is required to cooperate with the Bureau.

This Act also provides that once an investigation is completed, the investigation record must be sent to the Director of Criminal and Penal Prosecutions and, if the investigation was conducted following a death, to the coroner.

Lastly, it amends the Act respecting the determination of the causes and circumstances of death so that, in the cases and on the conditions determined by government regulation, financial assistance may be granted by the Chief Coroner to the family members of a person who died during an occurrence that led to an independent investigation, in order to cover the legal assistance and representation expenses they incur for the purposes of a coroner's inquest.

LEGISLATION AMENDED BY THIS ACT:

- Financial Administration Act (chapter A-6.001);
- Police Act (chapter P-13.1);
- Act respecting the determination of the causes and circumstances of death (chapter R-0.2).

Bill 12

AN ACT TO AMEND THE POLICE ACT AS CONCERNS INDEPENDENT INVESTIGATIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

POLICE ACT

1. Section 48 of the Police Act (chapter P-13.1) is amended by replacing “and 69,” in the first paragraph by “, 69 and 289.6,”.

2. Section 257 of the Act is amended by adding the following paragraph after the second paragraph:

“In addition, the Government shall make a regulation concerning the internal discipline of the members of the Bureau des enquêtes indépendantes established under section 289.5, on the recommendation of the director of the Bureau.”

3. The Act is amended by inserting the following chapter after section 289:

“CHAPTER III.1

“INDEPENDENT INVESTIGATIONS

“DIVISION I

“CONDUCT OF AN INDEPENDENT INVESTIGATION

“289.1. An independent investigation must be conducted if a person, other than an on-duty police officer, dies, sustains a serious injury or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody.

A government regulation shall determine what constitutes a serious injury within the meaning of the first paragraph.

“289.2. The director of the police force involved must inform the Minister without delay of any occurrence described in section 289.1. The director must also inform the internal affairs of the police force.

The Minister shall, upon being informed of such an occurrence, charge the Bureau des enquêtes indépendantes established under section 289.5 with

conducting the investigation in order to ensure the impartiality of the investigation.

“289.3. The Minister may also, in exceptional cases, charge the Bureau des enquêtes indépendantes with conducting an investigation on any occurrence involving a peace officer and related to the peace officer’s functions, other than an occurrence described in section 289.1.

“289.4. A government regulation shall be made to establish rules concerning the investigations the Bureau is charged with conducting under section 289.2. The regulation shall determine, among other things, the obligations of the police officers involved in an occurrence described in section 289.1, the police officers who witnessed the occurrence and the director of the police force involved.

“DIVISION II

“BUREAU DES ENQUÊTES INDÉPENDANTES

“§1.—*Establishment, composition, mission and operation*

“289.5. An investigation bureau to be known as the “Bureau des enquêtes indépendantes” is established.

The Bureau is composed of the following members appointed by the Government:

- (1) a director;
- (2) an assistant director; and
- (3) investigators.

The Government may designate investigation supervisors from among the investigators.

The Bureau is a police force for the purposes of the pursuit of its mission.

“289.6. The mission of the Bureau is to conduct any investigation the Minister has charged it with under Division II of Chapter III or Division I of this chapter. To that end, the Bureau shall have jurisdiction to prevent and repress statutory offences throughout Québec.

“289.7. The director of the Bureau is chosen from a list of at least three persons declared fit to hold that office by a selection committee formed by the Minister for that purpose.

The committee is composed of the Deputy Minister of Justice or the Deputy Minister’s representative, an advocate recommended by the Barreau du Québec,

a former director of a police force who is not a peace officer, recommended by the board of directors of the Association des directeurs de police du Québec, the secretary of the Conseil du trésor or the secretary's representative and the executive director of the École nationale de police du Québec. If the executive director of the École nationale de police is unable to participate in the committee, he or she shall designate and be represented by a member of the school's executive committee, subject to the Minister's approval

The committee shall evaluate the candidates' fitness for the office of director of the Bureau according to the selection criteria it has established, on the basis of their knowledge, including knowledge of criminal and penal law, their experience, including investigative experience, and their qualifications. The committee shall present a report to the Minister listing the candidates met by the committee whom it considers fit to hold the office of director of the Bureau. All information and documents regarding the candidates are confidential.

The members of the committee shall receive no remuneration except in the cases, and on the conditions and to the extent that may be determined by the Government. They are, however, entitled to reimbursement, on the conditions and to the extent determined by the Government, of expenses they incur in the exercise of their functions.

The selection process does not apply to a director of the Bureau whose term is renewed.

“289.8. After consultation with the director of the Bureau, the assistant director is chosen from among a list of at least three persons declared fit to hold that office by a selection committee formed by the Minister for that purpose.

The committee is composed of the director of the Bureau, an advocate recommended by the Barreau du Québec, a former director of a police force who is not a peace officer, recommended by the board of directors of the Association des directeurs de police du Québec, the secretary of the Conseil du trésor or the secretary's representative and the executive director of the École nationale de police du Québec. If the executive director of the École nationale de police is unable to participate in the committee, he or she shall designate and be represented by a member of the school's executive committee, subject to the Minister's approval.

The third, fourth and fifth paragraphs of section 289.7, with the necessary modifications, apply in the case of the assistant director.

“289.9. The minimum requirements for the offices of director and assistant director are the following:

(1) be either a retired judge, or an advocate who has been a member of the Barreau du Québec for at least 15 years;

(2) meet the conditions set out in the first paragraph of section 115, except subparagraph 4; and

(3) never have been a peace officer, otherwise than as a director, assistant director or investigator of the Bureau.

“289.10. The investigators are appointed on the recommendation of the director of the Bureau. When making a recommendation, the director must encourage parity between investigators who have never been peace officers and those who have.

“289.11. The minimum requirements for the position of investigator are the following:

(1) those referred to in paragraph 2 of section 289.9; and

(2) not be a peace officer, otherwise than as an investigator of the Bureau.

A government regulation shall determine the selection criteria and process applicable to investigators.

“289.12. The director, the assistant director and the investigators shall be appointed for a fixed term of five years or less. At the expiry of their terms, they shall remain in office until reappointed or replaced.

The Government shall determine their remuneration, employee benefits and other conditions of employment.

The director, the assistant director and the investigators shall exercise their functions on a full-time basis.

“289.13. The director shall take the oaths provided in Schedules A and B before a judge of the Court of Québec, and the assistant director and the investigators, before the director.

The director, in exercising the functions of office, is authorized to administer throughout Québec the same oaths as a commissioner for oaths appointed under the Courts of Justice Act (chapter T-16).

“289.14. A government regulation shall determine the training the members of the Bureau must undergo.

“289.15. The employees of the Bureau shall be appointed in accordance with the Public Service Act (chapter F-3.1.1).

The minimum requirements for a position as an employee of the Bureau are set out in paragraphs 2 and 3 of section 289.9.

“289.16. The director shall direct the activities of the Bureau and coordinate its work. The director shall define the duties and the responsibilities of the other members and the employees of the Bureau. The director is assisted by the assistant director.

“289.17. If the director is absent or unable to act, the assistant director shall act as interim director.

If the office of director is vacant following a resignation or otherwise, the assistant director shall act as interim director for a period which cannot exceed 18 months.

“289.18. An act, document or writing is binding on or may be attributed to the Bureau only if it is signed by the director or the assistant director or, to the extent provided in the delegation of signature instrument, by an investigator or an employee of the Bureau. The delegation of signature instrument must be published in the *Gazette officielle du Québec* but takes effect upon its signing by the director.

“289.19. The director, or a member of the Bureau designated by the director, shall designate a principal investigator to conduct each investigation.

An investigator may not be designated as the principal investigator if the investigation concerns a police force of which the investigator has at any time been a member or an employee.

“289.20. The director of a police force that provides level 4 services or services of a higher level must make available to the Bureau the support services and police officers requested by the director of the Bureau or any member of the Bureau designated by the director. To that end, the director and any other member or employee of the police force must cooperate with the Bureau.

A government regulation shall determine the terms governing the provision of support services mentioned in the first paragraph.

“289.21. Once the investigation under Division I of this chapter is completed, the director of the Bureau shall send the investigation record to the Director of Criminal and Penal Prosecutions and, if a death is involved, to the coroner.

“§2. — *Communications*

“289.22. The director of the Bureau shall report to the public on the status of the Bureau’s activities at least twice yearly and within an interval of not more than eight months.

“289.23. The government regulation made under section 289.4 may provide rules relating to the director’s communications with the public and the family members of a person described in section 289.1.

“§3.—*Financial provisions, recommendations and report*

“**289.24.** The fiscal year of the Bureau ends on 31 March.

“**289.25.** Each year, the director of the Bureau shall submit budgetary estimates for the following fiscal year to the Minister, in accordance with the form and content and the schedule determined by the Minister.

“**289.26.** The Bureau may, at any time, give written advice or make written recommendations to the Minister on any subject that it considers appropriate and that is related to the pursuit of its mission.

“**289.27.** Not later than 31 July each year, the Bureau shall submit an annual management report to the Minister, who shall table it in the National Assembly within 30 days after receiving it or, if the Assembly is not sitting, within 30 days after resumption.

The report must include the following information:

- (1) the number of investigations it has been charged with;
- (2) the number of investigations in progress;
- (3) the number of investigations completed;
- (4) the number of investigators, specifying how many of them had never been peace officers before their appointment; and
- (5) the support services the Bureau requested under section 289.20 and the cost of each such service furnished by police forces that provide level 4 or 5 services.

The report must contain any other information required by the Minister.

Every year before 1 April, the director of a police force that provides level 4 or 5 services must submit a report to the director of the Bureau, in the form determined by the latter, which states the cost of each of the support services the police force furnished to the Bureau in the previous fiscal year.”

4. Section 310 of the Act is amended by inserting “any of” before “sections” and by replacing “120, 152, 286 and 288” by “120 and 152”.

5. Section 311 of the Act is amended by inserting “any of” before “sections” and by replacing “and 294” by “, 286, 288 and 289.20 and the first paragraph of section 289.2”.

6. Section 354 of the Act is amended by replacing “or a special constable” in the first paragraph by “, a special constable or a member of the Bureau des enquêtes indépendantes”.

FINANCIAL ADMINISTRATION ACT

7. Schedule 1 to the Financial Administration Act (chapter A-6.001) is amended by inserting the following, in alphabetical order:

“Bureau des enquêtes indépendantes”.

ACT RESPECTING THE DETERMINATION OF THE CAUSES AND CIRCUMSTANCES OF DEATH

8. The Act respecting the determination of the causes and circumstances of death (chapter R-0.2) is amended by inserting the following section after section 125:

“**125.1.** The Chief Coroner may, on the recommendation of the coroner conducting the inquest and in accordance with the regulation under section 168.1, grant financial assistance to members of a deceased person’s family.”

9. The Act is amended by inserting the following section after section 168:

“**168.1.** A government regulation may be made to determine the amounts, the eligibility requirements and the terms and conditions of payment of the financial assistance the Chief Coroner may grant to members of a deceased person’s family under section 125.1 to cover expenses incurred for legal assistance and representation during a coroner’s inquest following an independent investigation conducted by the Bureau des enquêtes indépendantes in accordance with section 289.2 of the Police Act (chapter P-13.1).”

TRANSITIONAL AND FINAL PROVISIONS

10. Not later than three years after the beginning of its first investigation, the Bureau des enquêtes indépendantes must report to the Minister on the carrying out of Chapter III.1 of Title V of the Police Act (chapter P-13.1), enacted by section 3, and may make recommendations to the Minister.

The Minister tables the report in the National Assembly within 30 days after receiving it or, if the Assembly is not sitting, within 30 days after resumption.

11. This Act comes into force on 15 May 2013, except section 3 insofar as it enacts sections 289.1 to 289.3 and 289.19 to 289.22 of the Police Act, and sections 4 and 5, which come into force on the date or dates to be set by the Government.