



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 17

(2013, chapter 12)

An Act to amend the Professional Code with respect to disciplinary justice

Introduced 13 February 2013
Passed in principle 19 March 2013
Passed 6 June 2013
Assented to 12 June 2013

Québec Official Publisher
2013

EXPLANATORY NOTES

This Act amends the disciplinary justice system applicable to members of the professional orders. To that end, the Bureau des présidents des conseils de discipline is constituted within the Office des professions du Québec. The Bureau consists of not more than 20 disciplinary council chairs of professional orders, including a senior chair and a deputy senior chair appointed on a full-time basis by the Government for a term of not more than five years.

A selection procedure for disciplinary council chairs is to be established by the Government. The Government must also adopt a code of ethics applicable to the chairs and other members of the disciplinary councils.

Several complaints may be heard by the same disciplinary council.

The rules governing the replacement of the disciplinary council chair seized of a complaint are made clearer and more complete.

In addition, every year, the senior chair is required to present to the Minister of Justice a plan setting out, among other things, management objectives to ensure the quality and the expeditious nature of complaint processing and the decision-making process.

Moreover, a professional's participation in an act involving collusion, corruption, malfeasance, breach of trust or influence peddling is defined as an act derogatory to the dignity of the profession.

Lastly, related and transitional provisions are introduced.

LEGISLATION AMENDED BY THIS ACT:

– Professional Code (chapter C-26).

Bill 17

AN ACT TO AMEND THE PROFESSIONAL CODE WITH RESPECT TO DISCIPLINARY JUSTICE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 16.1 of the Professional Code (chapter C-26) is amended by replacing “report mentioned in section 16.19” in the first paragraph by “reports mentioned in sections 16.19 and 115.9”.

2. The Code is amended by inserting the following section after section 59.1:

“**59.1.1.** The following acts engaged in by a professional also constitute acts derogatory to the dignity of the profession:

(1) committing an act involving collusion, corruption, malfeasance, breach of trust or influence peddling;

(2) attempting to commit such an act or counselling another person to do so; and

(3) conspiring to commit such an act.”

3. The Code is amended by replacing the heading of subdivision 1 of Division VII of Chapter IV by the following:

“§1. — *Bureau des présidents des conseils de discipline*

“**115.1.** A bureau of disciplinary council chairs, known as the Bureau des présidents des conseils de discipline, is constituted within the Office.

The Bureau is to consist of not more than 20 disciplinary council chairs, including a senior chair and a deputy senior chair.

“**115.2.** The chairs are appointed by the Government for a fixed term of not more than five years from among the persons declared qualified in accordance with the selection procedure the Government determines by regulation. The chairs exercise their functions on a full-time basis.

The selection procedure does not apply to a chair whose term is renewed.

“**115.3.** Only an advocate who has at least 10 years of practice and possesses relevant legal experience may be the chair of a disciplinary council.

“**115.4.** A senior chair and a deputy senior chair are designated by the Government from among the chairs.

“**115.5.** The selection procedure for chairs

(1) sets out the procedure for running for office;

(2) provides for the establishment of a selection committee to assess the qualifications of candidates and provide an advisory opinion on them; and

(3) identifies the selection criteria that the committee is to take into account.

The members of a selection committee are not remunerated, except in the cases, on the conditions and to the extent determined by the Government. However, they are entitled to the reimbursement of any expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

“**115.6.** The Government shall determine the remuneration, employee benefits and other conditions of employment of the chairs, the senior chair and the deputy senior chair.

“**115.7.** The senior chair is responsible for the administration and overall management of the Bureau. The functions of the senior chair include

(1) fostering the participation of the disciplinary council chairs in the formulation of guiding principles with a view to maintaining a high level of quality and coherence in decisions;

(2) taking measures to promote the expeditious nature of complaint processing and the decision-making process;

(3) consulting the professional orders to assess their particular needs;

(4) coordinating and assigning the work of the chairs, who, in that respect, must comply with the senior chair’s orders and directives;

(5) seeing that the chairs observe standards of ethical conduct;

(6) promoting the professional development of the chairs as regards the exercise of their functions, and

(7) periodically evaluating the knowledge and the skills of the chairs in the exercise of their functions, and their contribution to achieving the objectives set out in this division.

“**115.8.** Every year the senior chair shall present to the Minister a plan setting out management objectives to ensure the quality and expeditious nature of complaint processing and the decision-making process and stating the results achieved in the preceding year.

In addition to the information requested by the Minister, the plan must include the following information, which the senior chair compiles for each disciplinary council on a monthly basis:

(1) the number of days on which hearings were held and the average number of hours devoted to them;

(2) the number of postponements granted;

(3) the nature of the complaints for which a management conference was held, and the number of such complaints;

(4) the nature of the complaints and requests heard, their number and the places and dates of the hearings;

(5) the nature of the complaints and requests taken under advisement, their number and the time devoted to advisement;

(6) the nature and the number of decisions rendered;

(7) the nature and the number of decisions appealed; and

(8) the time devoted to the proceedings, from the date of receipt of the complaint or request until the beginning of the hearing or the rendering of the decision on the conviction and, if applicable, the penalty.

“**115.9.** The senior chair may make recommendations to the Minister to improve complaint processing and the decision-making process.

“**115.10.** The deputy senior chair shall exercise the functions of the senior chair if the latter is absent or unable to act.

“§1.1. — *Disciplinary councils*”.

4. Section 116 of the Code is amended by inserting “, the senior chair, the deputy senior chair” after “syndic” in the fourth paragraph.

5. Section 117 of the Code is replaced by the following sections:

“**117.** The members of a disciplinary council other than the chair are appointed by the board of directors of the order from among the order’s members. The board of directors shall fix the duration of their term, which must be at least three years.

“**117.1.** The Government shall set the travel and lodging expenses of the disciplinary council members appointed by the board of directors of the order. The expenses are borne by the order.

“**117.2.** The Government, after consulting with the Bureau and the Québec Interprofessional Council, shall establish, by regulation, a code of ethics applicable to members of the disciplinary councils.

“**117.3.** The code of ethics sets out the rules of conduct of disciplinary council members and their duties towards the public, the parties, the parties’ witnesses and the persons representing the parties. It defines, in particular, conduct that is derogatory to the honour, dignity or integrity of a member of a disciplinary council. In addition, the code of ethics may determine the activities or situations that are incompatible with the office held by the members of a disciplinary council, the obligations of those members concerning the disclosure of interests, and the functions the members may exercise free of charge.

The code of ethics may include special rules governing disciplinary council members other than the chair.”

6. Sections 118 and 118.1 of the Code are repealed.

7. Section 118.2 of the Code is amended by replacing “désignés” in the French text by “nommés”.

8. Section 118.3 of the Code is replaced by the following sections:

“**118.3.** Where, being unable to act, a member is unable to continue with a hearing, whether it be the conviction hearing or the penalty hearing, the two remaining members, provided one is the chair, may validly proceed with the hearing and render a decision on the conviction and the penalty.

“**118.4.** Where a member is replaced in accordance with section 118.2, the two remaining members, provided one is the chair, may proceed with the hearing and validly render a decision on the conviction and the penalty.

A chair who has been replaced may continue to hear a complaint, no matter what stage of the hearing has been reached, with the authorization of and for the length of time determined by the senior chair.

Where the decision is not rendered within the time determined by the senior chair, the latter may, on the senior chair’s initiative or at the request of one of the parties, extend the time limit or withdraw the matter from the chair. The request must be filed with the secretary of the disciplinary council concerned. It must be served in accordance with the Code of Civil Procedure (chapter C-25) on the senior chair and the council members who are seized of the complaint, and on the parties. Before extending the time limit or withdrawing the matter from the chair, the senior chair must take the circumstances and the interest of the parties into account.

“118.5. Where the chair is dismissed, where a matter is withdrawn from the chair, where the chair is unable to act, or where the chair’s term of office has expired and the chair decides not to proceed with a hearing, the senior chair must designate a new chair as soon as possible to hear the complaint, no matter what stage of the hearing has been reached.

Where a new chair is designated before the decision on the conviction is rendered, the disciplinary council may, with the consent of the parties, continue the proceeding and rely on the evidence already filed.

Where the chair is designated after the decision on the conviction is rendered, the disciplinary council continues the proceeding at the stage of the penalty hearing. The penalty hearing is governed by the same rules for evidence already filed as those set out in the second paragraph.

Where the decision on the conviction or the penalty was handed down at the hearing but not recorded in writing before a new disciplinary council chair was designated in accordance with the first paragraph, the senior chair, together with at least one other disciplinary council member, may sign the minutes of the proceeding. The decision is presumed to be in compliance with section 154 in such a case.

“118.6. Interlocutory decisions rendered before continuance of suit remain valid.”

9. Section 119 of the Code is repealed.

10. Section 120 of the Code is amended by replacing the second paragraph by the following paragraph:

“Where the secretary is absent or unable to act, the board of directors appoints a replacement for as long as the secretary is absent or unable to act.”

11. The Code is amended by inserting the following heading before section 121:

“§1.2. — *Syndics*”.

12. The Code is amended by inserting the following heading after section 123.2:

“§1.3. — *Review committees*”.

13. Section 125 of the Code is repealed.

14. Section 126 of the Code is amended by adding “, who must send a copy to the senior chair as soon as possible” at the end of the first paragraph.

15. Section 130 of the Code is amended by inserting “or 59.1.1” after “section 59.1” in paragraph 1.

16. Section 131 of the Code is amended by striking out “or the substitute chair” at the end.

17. The Code is amended by inserting the following section after section 132:

“132.1. Complaints whose subject matter could suitably be combined, whether or not the same parties are involved, may be joined by order of the senior chair or the deputy senior chair, on the conditions they fix. The senior chair or the deputy senior chair may not, however, join complaints for which the disciplinary councils of different professional orders are responsible.

An order made under the first paragraph may be revoked by the chair designated to hear the complaints if the chair believes that the interests of justice will be better served as a result. The chair’s decision cannot be appealed.”

18. Section 133 of the Code is amended by replacing “The request for provisional striking off the roll or immediate provisional restriction of the right to engage in professional activities” in the first paragraph by “The secretary of the disciplinary council must send a copy of the request for provisional striking off the roll or immediate provisional restriction of the right to engage in professional activities to the senior chair as soon as possible. The request”.

19. Section 138 of the Code is replaced by the following section:

“138. A disciplinary council shall sit in divisions, each division consisting of three members, including the chair designated by the senior chair. The secretary of the disciplinary council shall, as soon as possible, choose from among the council members appointed by the board of directors the other two members who are to sit with the chair.

In assigning work to the chairs, the senior chair may take into account their specific knowledge and experience, the number of complaints referred to them and the special needs of certain professional orders.”

20. Section 139 of the Code is amended by replacing the first paragraph by the following paragraph:

“139. The senior chair, in collaboration with the chair and the secretary of the disciplinary council, must make sure that the hearing begins within a reasonable time. Barring particular circumstances, the hearing must begin within 120 days after service of the complaint.”

21. Sections 143.1 to 143.4 and 154 of the Code are amended by striking out all occurrences of “or substitute chair”.

22. Section 149.1 of the Code is replaced by the following section:

“149.1. A syndic may, by way of a complaint, seize the disciplinary council

(1) of any decision of a Canadian court finding a professional guilty of a criminal offence,

(2) of any decision made in Québec finding a professional guilty of an offence under section 188 or of an offence under a provision of a Québec or a federal Act, or

(3) of any decision made outside Québec finding a professional guilty of an offence which, if committed in Québec, could have resulted in penal proceedings under section 188 or penal proceedings under a provision of a Québec or a federal Act.

The decision referred to in the first paragraph must, in the opinion of the syndic, be related to the practice of the profession.

A certified copy of the judicial decision is proof before the disciplinary council that the offence was committed and that any facts reported in the decision are true. The disciplinary council then imposes on the professional, where expedient, one or more of the sanctions prescribed by section 156.”

23. Section 151 of the Code is amended

(1) by striking out “or substitute chair” in the third paragraph;

(2) by replacing “referred to in section 138” in the fourth paragraph by “appointed by the board of directors of the order”;

(3) by replacing “revised by the chair of the disciplinary council” in the fifth paragraph by “revised by the senior chair or the deputy senior chair”;

(4) by replacing the last sentence of the fifth paragraph by the following sentence: “The decision concerning the revision of the list is not subject to appeal.”

24. Section 159 of the Code is amended by replacing “without delay” in the first paragraph by “as soon as possible”.

25. Section 161 of the Code is amended by inserting “The secretary must send a copy of the petition to the senior chair as soon as possible.” after “restriction or suspension.” in the first paragraph.

26. Section 164 of the Code is amended

(1) by striking out subparagraph 2 of the first paragraph;

(2) by striking out the third paragraph;

(3) by striking out “or the motion for leave to appeal, as the case may be” in the fourth paragraph;

(4) by striking out “or the decision of the tribunal granting leave to appeal” in the fifth paragraph.

27. Section 184.3 of the Code is replaced by the following section:

“184.3. The Office may, by regulation and after consultation with the Bureau and the Québec Interprofessional Council, adopt rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils.”

28. Section 188.2.1 of the Code is amended

(1) by replacing “the code of ethics is contravened” by “during which the contravention continues”;

(2) by inserting “section 59.1, 59.1.1 or 59.2 or” after “contravene”.

29. Section 193 of the Code is amended by inserting “the senior chair, the deputy senior chair,” at the beginning of paragraph 4.

30. Section 197 of the Code is amended by inserting “Division VII of Chapter IV and” after “with the application of” in the second paragraph.

TRANSITIONAL AND FINAL PROVISIONS

31. The term of the disciplinary council chairs of professional orders, the substitute chairs and the replacement chair in office on the date preceding the date of coming into force of this section ends on the date of coming into force of this section.

A chair may, however, continue in office on the same conditions to conclude cases the chair has begun to hear but has not yet decided.

The decision on conviction and, if applicable, on the penalty must be rendered before the date that is six months after the date of coming into force of this section. Failure to observe that time limit causes the matter to be withdrawn from the chair unless the senior chair decides to extend the time limit.

If a matter is withdrawn from a chair or if a chair decides not to continue to exercise the functions of office, the senior chair must designate a new chair as soon as possible to hear the complaint, whatever stage the hearing has reached.

The rules set out in the second, third and fourth paragraphs of section 118.5 of the Professional Code (chapter C-26), as enacted by section 8, apply to the continuance of the hearing in such a case.

32. A person who, on the date preceding the date of coming into force of this section, was continuing to hear a complaint under section 118.3 of the Professional Code or the third paragraph of section 119 of that Code may, on the same conditions, with the authorization of the senior chair and for the period the senior chair determines, continue to hear the complaint and render a decision. Failure to observe the prescribed time limit causes the matter to be withdrawn from the chair unless the senior chair decides to extend the time limit.

The fourth and fifth paragraphs of section 31 apply, with the necessary modifications, in such a case.

33. Where a disciplinary council chair had begun to hear a complaint before 12 June 2013 and, before or after that date and before the coming into force of section 8, the matter is withdrawn from that chair under the third paragraph of section 118.3 of the Professional Code and the new chair is designated before the decision on the conviction has been rendered, the disciplinary council may, without a new division being formed and with the consent of the parties, continue the proceeding and rely on the evidence already filed.

Where the chair is designated after the decision on the conviction is rendered, the disciplinary council continues the proceeding at the stage of the penalty hearing. The penalty hearing is governed by the same rules for evidence already filed as those set out in the first paragraph.

Where the decision on the conviction was handed down at the hearing but not recorded in writing before the matter was withdrawn from the chair, the replacement chair, together with at least one other disciplinary council member, may sign the minutes of the proceeding if it contains the reasons for the decision. The decision is presumed to be in compliance with section 154 of the Professional Code in such a case.

34. The first code of ethics established by the Government under section 117.2 of the Professional Code, as enacted by section 5, is adopted without consulting the Bureau des présidents des conseils de discipline.

35. The first rules of evidence and practice adopted by the Office des professions du Québec under section 184.3 of the Professional Code, as amended by section 27, are adopted without consulting the Bureau des présidents des conseils de discipline.

36. The provisions of this Act come into force on the date or dates to be set by the Government, except section 2, section 3 to the extent that it concerns section 115.2 of the Professional Code, insofar as that section refers to the

selection procedure for chairs, and sections 115.3 and 115.5 of the Code, section 5 to the extent that it concerns sections 117.2 and 117.3 of the Code, and sections 22, 26, 27, 28 and 33 to 35, which come into force on 12 June 2013.