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Bill 47

(2015, chapter 18)

An Act to modernize the governance of Bibliothèque et Archives nationales du Québec

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EXPLANATORY NOTES

This Act makes various organizational and operational changes to Bibliothèque et Archives nationales du Québec in line with recent practices adopted for the governance of state-owned bodies and enterprises.

The changes concern mainly the separation of the offices of chair of the board of governors and president and chief executive officer, the composition of the board, including a requirement to maintain a significant proportion of independent members, and the establishment, under the authority of the board, of an audit committee, a governance and ethics committee and a human resources committee.

New planning and reporting requirements are imposed on Bibliothèque et Archives nationales du Québec.

Lastly, the Act contains transitional and final provisions.

LEGISLATION AMENDED BY THIS ACT:

– Act respecting Bibliothèque et Archives nationales du Québec (chapter B-1.2).

Bill 47

AN ACT TO MODERNIZE THE GOVERNANCE OF BIBLIOTHÈQUE ET ARCHIVES NATIONALES DU QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The heading of Chapter I of the Act respecting Bibliothèque et Archives nationales du Québec (chapter B-1.2) is replaced by the following:

“ORGANIZATION

“DIVISION I

“ESTABLISHMENT”.

2. Sections 4 to 13 of the Act are replaced by the following:

“DIVISION II

“BOARD OF GOVERNORS

“**4.** The affairs of Bibliothèque et Archives nationales are administered by a board of governors composed of 15 members, including the chair of the board and the president and chief executive officer, appointed in accordance with the rules set out in this division.

“**4.1.** Nine board members are appointed by the Government on the recommendation of the Minister of Culture and Communications and taking into consideration the expertise and experience profiles established by the board, after consultation with bodies the Minister considers representative of the sectors concerned. Among the board members appointed by the Government,

(1) two must come from the archival sector;

(2) two must come from the library science sector;

(3) one must come from the education sector;

(4) one must come from the cultural sector, such as the book, film or music industry; and

(5) the other three may come from various sectors, including the business sector.

One member, a user of Bibliothèque et Archives nationales, is appointed by the Government on the recommendation of the users' committee established under section 13.2.

The person acting as head librarian of Ville de Montréal is a member of the board by virtue of office.

Two other board members are appointed by the Government on the recommendation of Ville de Montréal, one from the borough library sector and the other from the culture and heritage sectors in the territory of Ville de Montréal.

“4.2. The chair of the board and the president and chief executive officer are appointed by the Government; their offices may not be held concurrently.

The president and chief executive officer is appointed on the recommendation of the board, based on the expertise and experience profile established by the board.

If the board does not recommend a candidate for the position of president and chief executive officer within a reasonable time, the Government may appoint the president and chief executive officer after notifying the board members.

“4.3. At least two thirds of the board members, including the chair, must, in the opinion of the Government, qualify as independent members within the meaning of section 4 of the Act respecting the governance of state-owned enterprises (chapter G-1.02). Sections 5 to 8 of that Act apply, with the necessary modifications.

“4.4. One board member must be a member of the professional order of accountants mentioned in the Professional Code (chapter C-26).

One board member must have expertise related to document management within a public body within the meaning of section 2 of the Archives Act (chapter A-21.1).

At least three board members must be from regions other than the Montréal region.

“4.5. The composition of the board must tend towards gender parity. The appointments must also be consistent with the government policy established under subparagraph 1 of the first paragraph of section 43 of the Act respecting the governance of state-owned enterprises (chapter G-1.02).

“5. The chair of the board and the president and chief executive officer are appointed for a term of up to five years and the other board members for a term of up to four years.

At the end of their term, the board members remain in office until replaced or reappointed.

“6. Board members may be reappointed twice to serve in that capacity only for a consecutive or non-consecutive term.

In addition to terms served as a board member, the chair of the board may be reappointed twice to serve in that capacity for a consecutive or non-consecutive term.

“7. A vacancy on the board is filled in accordance with the rules of appointment governing the appointment of the member to be replaced.

Absence from the number of board meetings determined in the by-laws made under section 13.6 constitutes a vacancy.

“8. The president and chief executive officer may not have a direct or indirect interest in a body, enterprise or association that places his or her personal interests in conflict with those of Bibliothèque et Archives nationales. If such an interest devolves to the president and chief executive officer, including by succession or gift, it must be renounced or disposed of with dispatch.

Any other board member who has a direct or indirect interest in a body, enterprise or association that places the member's personal interests in conflict with those of Bibliothèque et Archives nationales must disclose it in writing to the chair of the board and abstain from participating in any discussion or decision involving that body, enterprise or association. The member must also withdraw from a meeting while the matter is discussed or voted on.

This section does not prevent a board member from expressing an opinion on general measures relating to conditions of employment within Bibliothèque et Archives nationales that would also apply to the board member.

“9. If a board member is sued by a third party for an act done in the exercise of the functions of office, Bibliothèque et Archives nationales shall assume the member's defence and pay any damages awarded as compensation for the injury resulting from that act, unless the member committed a gross fault or a personal fault separable from those functions.

In penal or criminal proceedings, however, Bibliothèque et Archives nationales shall pay the member's defence costs only if the member was discharged or acquitted, or if it judges that the member acted in good faith.

“10. If Bibliothèque et Archives nationales sues a board member for an act done in the exercise of the functions of office and loses its case, it shall pay the member's defence costs if the court so decides.

If Bibliothèque et Archives nationales wins its case only in part, the court may determine the amount of the defence costs it must pay.

“11. Board members other than the president and chief executive officer receive no remuneration except in the cases, on the conditions and to the extent determined by the Government. However, they are entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

“DIVISION III

“OPERATION

“§1. — *Board of governors and its chair*

“12. The board of governors shall determine the strategic directions of Bibliothèque et Archives nationales, see to their implementation and inquire into any issue it considers important.

The board is accountable to the Government, and its chair is answerable to the Minister, for the decisions of Bibliothèque et Archives nationales.

“13. The board exercises the functions described in sections 15 to 18 of the Act respecting the governance of state-owned enterprises (chapter G-1.02), with the necessary modifications, including

- (1) adopting the strategic plan;
- (2) approving the financial statements, annual activity report and annual budget; and
- (3) approving the expertise and experience profiles to be used in appointing board members and those recommended for the office of president and chief executive officer.

“13.1. The board must establish an audit committee, a governance and ethics committee and a human resources committee.

The president and chief executive officer cannot be a member of these committees.

These committees are composed solely of independent members.

The responsibilities and rules applicable to those committees are those set out in sections 22 to 27 of the Act respecting the governance of state-owned enterprises (chapter G-1.02), with the necessary modifications.

“13.2. In addition to setting up a users' committee, the board may establish any other committee to examine specific issues or to facilitate the proper operation of Bibliothèque et Archives nationales.

Subject to the provisions of this Act, the board shall determine the composition, functions, duties and powers of the committees, and the rules governing the administration of their affairs and any other measure useful for their operation.

“13.3. The chair of the board shall preside at board meetings and see to the proper operation of the board.

The chair shall also see to the proper operation of the board committees and may take part in any committee meeting.

“13.4. The chair of the board shall evaluate the performance of the other board members according to criteria established by the board.

The chair shall also assume any other function assigned by the board.

“13.5. The board shall designate the chair of one of the committees established under section 13.1 as vice-chair to act as a replacement when the chair of the board is absent or unable to act.

“13.6. The board may make by-laws to govern the internal management of Bibliothèque et Archives nationales.

The by-laws may provide that absence from the number of board meetings they determine constitutes a vacancy in the cases and circumstances they specify.

“13.7. The quorum at board meetings is the majority of its members, including the president and chief executive officer or the chair of the board.

Board decisions are made by a majority vote of the members present.

In the case of a tie vote, the person presiding at the meeting has a casting vote.

“13.8. No deed, document or writing binds Bibliothèque et Archives nationales, or may be attributed to it, unless it is signed by the president and chief executive officer or, to the extent and on the conditions provided by by-law of the board, by another person authorized to do so.

The by-law may also, subject to the conditions it determines, allow a required signature to be affixed by means of an automatic device to the documents it determines, or a facsimile of a signature to be engraved, lithographed or printed on such documents. However, the facsimile has the same force as the signature itself only if the document is countersigned by a person authorized by the chair of the board.

“13.9. The minutes of board meetings, approved by the board and certified true by the chair or by any other person authorized to do so under the by-laws of the board, are authentic, as are the documents or copies of documents emanating from Bibliothèque et Archives nationales or forming part of its records, provided they are signed or certified true by one of those persons.

“§2. — President and chief executive officer

“13.10. The president and chief executive officer is responsible for the direction and management of Bibliothèque et Archives nationales within the framework of its by-laws and policies.

The president and chief executive officer shall propose strategic directions to the board, as well as a capital plan and an operating plan for Bibliothèque et Archives nationales.

The president and chief executive officer shall also assume any other function assigned by the board.

“13.11. The president and chief executive officer must make sure that the board is given, at its request, adequate human, material and financial resources to enable it and its committees to perform their functions.

“13.12. The office of president and chief executive officer is a full-time position.

“13.13. The Government shall determine the remuneration, employee benefits and other conditions of employment of the president and chief executive officer.

“13.14. The board may designate a personnel member of Bibliothèque et Archives nationales to temporarily exercise the functions of the president and chief executive officer when the latter is absent or unable to act.

“§3. — Personnel members

“13.15. The personnel members of Bibliothèque et Archives nationales are appointed according to the staffing plan and the standards it establishes. The staffing plan includes at least three senior management positions, with one senior manager responsible for the preservation mission, another for the dissemination mission, and a third for the archival mission. The latter bears the title “Keeper of the Archives nationales du Québec”; the office of the Keeper is located in the city of Québec.

Subject to the provisions of a collective agreement, Bibliothèque et Archives nationales shall determine the standards and scales of remuneration, employee benefits and other conditions of employment of its personnel members in accordance with the conditions defined by the Government.”

- 3.** Section 17 of the Act is repealed.
- 4.** The heading of Chapter IV of the Act is replaced by the following heading:
“PLANNING, AUDITING AND REPORTING”.
- 5.** Sections 25 and 26 of the Act are replaced by the following section:

“25. Bibliothèque et Archives nationales must prepare a strategic plan and submit it to the Government for approval. The plan must take into account the policy directions and objectives given by the Minister.

The plan must be submitted on or before the date set by the Minister and established in accordance with the form, content and intervals determined by the Minister.

The plan must include
 - (1) the context in which Bibliothèque et Archives nationales operates and the main challenges it faces;
 - (2) the objectives and strategic directions of Bibliothèque et Archives nationales;
 - (3) the results targeted over the period covered by the plan;
 - (4) the performance indicators to be used in measuring results; and
 - (5) any other element determined by the Minister.”
- 6.** Section 27 of the Act is amended by adding the following paragraph at the end:

“The report must also include the information required under sections 36 to 39 of the Act respecting the governance of state-owned enterprises (chapter G-1.02), with the necessary modifications.”
- 7.** The Act is amended by inserting the following section after section 27:

“27.1. Bibliothèque et Archives nationales must also provide the Minister with any information the Minister requires regarding its activities.”
- 8.** The Act is amended by inserting the following sections after section 29:

“29.1. The Minister may issue directives on the direction and general objectives to be pursued by Bibliothèque et Archives nationales.

The directives must be approved by the Government, and come into force on the day they are approved. Once approved, they are binding on Bibliothèque et Archives nationales, which must comply with them.

The directives must be tabled in the National Assembly within 15 days after they are approved by the Government or, if the Assembly is not sitting, within 15 days of resumption.

“29.2. At least once every 10 years, the Minister must report to the Government on the carrying out of this Act. The report must include recommendations concerning the updating of the mission of Bibliothèque et Archives nationales.

The Minister tables the report in the National Assembly.”

TRANSITIONAL AND FINAL PROVISIONS

9. The chair of Bibliothèque et Archives nationales in office on 12 June 2015 continues in office on the same terms, for the unexpired portion of his or her term, as president and chief executive officer.

The chair continues to assume the function of chair of the board of governors until that office is filled in accordance with the new provisions.

The other members of the board of governors of Bibliothèque et Archives nationales in office on the same date continue in office on the same terms, for the unexpired portion of their term, until they are replaced or reappointed.

10. Despite section 4.3 of the Act respecting Bibliothèque et Archives nationales du Québec (chapter B-1.2), enacted by section 2, a member who is not an independent member on 12 June 2015 may be a member of a committee referred to in section 13.1, also enacted by section 2, until the number of independent members on the board of governors corresponds to two thirds of the members.

11. The strategic plan requirement under section 25 of the Act respecting Bibliothèque et Archives nationales du Québec, enacted by section 5, applies from the 2016–2017 fiscal year.

12. Despite section 29.2 of the Act respecting Bibliothèque et Archives nationales du Québec, enacted by section 8, the first report required under that section 29.2 must be submitted in the fifth year following the year of coming into force of this Act.

13. This Act comes into force on 12 June 2015.