



NATIONAL ASSEMBLY

FIRST SESSION

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Bill 114

(2016, chapter 32)

An Act to modernize the governance of national museums

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EXPLANATORY NOTES

This Act proposes various changes in the way national museums are organized and operated, on the basis of the latest governance practices selected for various bodies and state-owned enterprises.

The Act introduces new rules concerning the positions of chair of the board of directors and director general as well as the composition of the board, including the requirement that at least the majority of the board members be independent. In addition, the composition of the board must tend towards gender parity, and appointments to the board must ensure the presence of at least one young person who is 35 years of age or under at the time of appointment and be representative of Québec society, including by ensuring the presence of persons from a variety of communities.

The Act introduces the obligation to establish an audit committee, a governance and ethics committee and a human resources committee.

New requirements are imposed on national museums with regard to their general collections management policy and their planning and reporting procedures.

Lastly, the Act contains transitional and final provisions.

LEGISLATION AMENDED BY THIS ACT:

- National Museums Act (chapter M-44).

Bill 114

AN ACT TO MODERNIZE THE GOVERNANCE OF NATIONAL MUSEUMS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

- 1.** The National Museums Act (chapter M-44) is amended by moving sections 4 to 6 after section 3.1.
- 2.** The heading of Chapter III of the Act is replaced by the following heading:
“ORGANIZATION”.
- 3.** Sections 7 to 22 of the Act are replaced by the following:

“DIVISION I

“COMPOSITION OF A MUSEUM’S BOARD OF DIRECTORS

“**7.** The affairs of a museum are administered by a board of directors composed of 11 to 15 members appointed by the Government, as follows:

- (1) the chair of the board of directors;
- (2) the director general;
- (3) one person appointed on the recommendation of the local municipality in whose territory the museum’s head office is located or, if that territory is included in that of a metropolitan community, on the recommendation of that metropolitan community; and
- (4) not more than 12 other persons, appointed on the Minister’s recommendation, taking into consideration the expertise and experience profile established by the board and after consultation with socio-economic and cultural organizations, in particular organizations interested in museology.

The offices of chair of the board and director general may not be held concurrently.

“**8.** At least the majority of the board members must, in the opinion of the Government, qualify as independent directors 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.

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

“10. The composition of the board must tend towards gender parity. In addition, appointments to the board must ensure the presence of at least one young person who is 35 years of age or under at the time of his appointment and be representative of Québec society, including by ensuring the presence of persons from a variety of communities.

“11. The director general of a museum is appointed on the recommendation of the board, taking into consideration the expertise and experience profile established by the board.

If the board does not recommend a candidate for the position of director general within a reasonable time, the Government may appoint the director general after notifying the board members.

The director general may also be designated as president and chief executive officer.

“12. The chair of the board and the director general are appointed for a term of up to five years, and the other board members for a term of up to four years.

“13. 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.

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

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

Absence from the number of board meetings determined in the by-laws made under section 22.7 constitutes a vacancy.

“16. Board members other than the director general 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 II**“OPERATION****“§1. — *General provisions***

“17. The director general 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 the museum. If such an interest devolves to the director general, 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 the museum shall disclose it in writing to the chair of the board or, in the case of a disclosure by the chair of the board, to the director general, and abstain from participating in any discussion or decision involving that body, enterprise or association. The member shall 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 the museum that would also apply to the board member.

“18. If a board member is sued by a third party for an act done in the exercise of the functions of office, the museum 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, the museum 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.

“19. If the museum 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 the museum wins its case only in part, the court may determine the amount of the defence costs it must pay.

“§2. — *Chair of a museum’s board of directors*

“20. 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.

“21. 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.

“22. The board shall designate the chair of one of the committees established under section 22.4 as vice-chair to act as a replacement when the chair of the board is absent or unable to act.

“§3.—Responsibilities and functions of a museum’s board of directors

“22.1. The board shall determine the museum’s strategic directions, see to their implementation and inquire into any matter it considers important.

The board is accountable to the Government, and its chair is answerable to the Minister, for the museum’s decisions.

“22.2. A museum shall adopt a general collections management policy that includes

(1) the lines of development chosen for its collections in light of its mission and exhibition space;

(2) its acquisition policy; and

(3) its reserve-space management policy.

The general policy must be established in accordance with the form and content determined by the Minister, who may, in particular, specify the property or classes of property that need not be covered by the policy.

Not later than 15 days after adopting the policy or making any amendment to it, the museum shall send a copy to the Minister and make it available on its website.

Unless the Minister specifies otherwise, a museum’s general collections management policy must be updated at least once every five years.

“22.3. 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 that recommended for the office of director general.

“22.4. The board shall establish an audit committee, a governance and ethics committee and a human resources committee. The latter two committees may, at the board’s discretion, be amalgamated.

The governance and ethics committee and the human resources committee must be composed, in the majority, of independent members and be chaired by an independent member. The director general may not be a member of those committees.

The audit committee must be composed solely of independent members.

The responsibilities and rules applicable to the 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.

“22.5. The board may establish committees, other than those provided for by this Act, to examine specific matters or facilitate the proper operation of the museum, in particular to advise the board on the acquisition of property.

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

“22.6. Committee members receive no remuneration except in the cases, on the conditions and to the extent that may be 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.

“22.7. The board may make by-laws to govern the internal management of the museum.

The by-laws may, in particular,

(1) provide that a member’s absence from the number of board meetings they determine constitutes a vacancy in the cases and circumstances they specify;

(2) establish internal management standards and surveillance and security measures for the property in its establishment; and

(3) determine conditions for the acquisition, alienation, leasing, lending, borrowing, donation, exchange, preservation or restoration of property that are the works of man or the products of nature.

“22.8. The quorum at board meetings is the majority of the board members, including the chair of the board or the director general.

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.

“22.9. No deed, document or writing binds a museum, or may be attributed to it, unless it is signed by the director general or, to the extent and on the conditions provided by a by-law of the museum, 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, allow the signature to be electronic, or allow 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 or the director general.

“22.10. The minutes of board meetings, approved by the board and certified true by the chair of the board or by any other person authorized to do so by a by-law of the museum, are authentic. This also applies to documents or copies of documents emanating from a museum or forming part of its records, provided they are so certified.

“§4. — A museum’s director general

“22.11. The director general is responsible for the direction and management of the museum within the framework of its by-laws and policies.

The director general shall propose strategic directions to the board, as well as a capital plan and an operating plan for the museum.

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

“22.12. The director general shall 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.

“22.13. The office of director general is a full-time position.

“22.14. The Government shall determine the remuneration, employee benefits and other conditions of employment of the director general.

“22.15. The board may designate a museum personnel member to temporarily exercise the functions of the director general when the latter is absent or unable to act.

“§5.—*A museum’s secretary and other personnel members*

“**22.16.** A museum may appoint a secretary and any other employee required for the performance of its functions.

“**22.17.** The secretary and other personnel members of a museum are appointed according to the museum’s staffing plan and the standards it establishes.

Subject to the provisions of a collective agreement, a museum 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.”

4. The heading of Chapter VI of the Act is replaced by the following heading:
“PLANNING, AUDITING AND REPORTING”.

5. Section 31 of the Act is replaced by the following sections:

“**31.** A museum shall 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 the museum operates and the main challenges it faces;
- (2) the museum’s objectives and strategic directions;
- (3) the results targeted for 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.

“**31.1.** Each year, a museum shall submit its budgetary estimates for the following fiscal year to the Minister, for approval, in accordance with the form and content and on the date determined by the Minister.”

6. Section 33 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 sections after section 38:

“38.1. The Minister may issue directives on the direction and general objectives to be pursued by a museum.

The directives must be approved by the Government, and come into force on the day they are approved. Once approved, they are binding on the museum, 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.

“38.2. At least once every 10 years, the Minister shall report to the Government on the carrying out of this Act. The report must include recommendations concerning the updating of the mission of museums.

The Minister shall table the report in the National Assembly.”

TRANSITIONAL AND FINAL PROVISIONS

8. The director general of a museum who is in office on 8 January 2017 continues in office on the same terms, for the unexpired portion of the term of office, until that office is filled in accordance with the new provisions.

However, if the term of office is not defined or expires after 8 January 2020, it ends on that date.

9. The chair and other voting members of a museum’s board of directors who are in office on 8 January 2017 continue in office on the same terms, for the unexpired portion of the term of office, until replaced or reappointed in accordance with the new provisions.

The term of office of honorary and non-voting members ends on 8 January 2017.

10. The Government may, in accordance with the Act respecting the governance of state-owned enterprises (chapter G-1.02), determine that a member of the board of directors of a museum who is in office on 8 January 2017 has the status of independent director.

11. The experience and expertise profiles used by the Government to appoint the members referred to in subparagraph 4 of the first paragraph of section 7 of the National Museums Act (chapter M-44), enacted by section 3 of this Act, must be established by a museum's board of directors and sent to the Minister not later than 9 March 2017.

12. The first general collections management policy adopted by a museum under section 22.2 of the National Museums Act, enacted by section 3 of this Act, must be adopted not later than 9 December 2017.

13. The first fiscal year to be covered by the strategic plan prepared under section 31 of the National Museums Act, enacted by section 5 of this Act, must be the 2018–2019 fiscal year.

14. This Act comes into force on 8 January 2017.