



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 87

(2016, chapter 34)

An Act to facilitate the disclosure of wrongdoings relating to public bodies

Introduced 2 December 2015
Passed in principle 18 February 2016
Passed 9 December 2016
Assented to 9 December 2016

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EXPLANATORY NOTES

The purpose of this Act is to facilitate the disclosure of wrongdoings relating to public bodies and establish a protection regime against reprisals.

The Act identifies the public bodies it applies to and defines what constitutes a wrongdoing.

The Act provides that any person may make a disclosure to the Public Protector according to the procedure the latter establishes. Following a disclosure, the Public Protector may conduct an investigation and make any recommendations considered appropriate in a report to the highest ranking administrative official within the public body concerned.

The Act also provides that employees of a public body may make disclosures within the public body. The highest ranking administrative official of each public body must, unless exempted by the Public Protector, establish a procedure facilitating employee disclosures of wrongdoings and designate a person to be responsible for receiving disclosures, verifying whether a wrongdoing has been committed or is about to be committed and, if that is the case, reporting as much to the highest ranking administrative official.

For childcare centres, subsidized day care centres and home childcare coordinating offices, the Act provides that disclosures may instead be made to the Minister of Families and that once the ensuing inspection or investigation has been concluded, the Minister may take corrective measures. It also amends the Educational Childcare Act to include provisions on the disclosure of wrongdoings and protection against reprisals.

A person may, under certain conditions, disclose to the public any information the person considers necessary if the person has reasonable grounds to believe that a wrongdoing posing a serious risk to a person's health or safety or to the environment has been committed or is about to be committed.

The Public Protector provides access to legal advice, on certain conditions, to any person making or wishing to make a disclosure to the Public Protector, the officer responsible for dealing with disclosures or the Minister of Families. Access to legal advice may also be offered

to persons cooperating in an audit, inspection or investigation or to persons who believe reprisals have been taken against them.

Reprisals are prohibited against any person who makes a disclosure or cooperates with an audit, inspection or investigation conducted following a disclosure. Procedures are put in place to allow persons who believe reprisals have been taken against them to file a complaint with the Public Protector or the Minister of Families. Penal provisions are introduced and the Act respecting labour standards is amended to protect the rights of employees involved in a disclosure made in accordance with this Act.

Lastly, the Act requires that a report on its implementation be tabled in the National Assembly.

LEGISLATION AMENDED BY THIS ACT:

- Tax Administration Act (chapter A-6.002);
- Charter of Ville de Montréal (chapter C-11.4);
- Anti-Corruption Act (chapter L-6.1);
- Act respecting labour standards (chapter N-1.1);
- Public Protector Act (chapter P-32);
- Educational Childcare Act (chapter S-4.1.1).

Bill 87

AN ACT TO FACILITATE THE DISCLOSURE OF WRONGDOINGS RELATING TO PUBLIC BODIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND SCOPE

- 1.** The purpose of this Act is to facilitate the disclosure, in the public interest, of wrongdoings committed or about to be committed in relation to public bodies and establish a general protection regime against reprisals.
- 2.** For the purposes of this Act, the following are public bodies:
 - (1) government departments;
 - (2) bodies and persons appointed or designated by the Government or a minister whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1);
 - (3) budget-funded bodies and bodies other than budget-funded bodies respectively listed in Schedules 1 and 2 to the Financial Administration Act (chapter A-6.001), including the persons listed in those schedules;
 - (4) government enterprises listed in Schedule 3 to the Financial Administration Act as well as the Commission de la construction du Québec and the Caisse de dépôt et placement du Québec;
 - (5) school boards governed by the Education Act (chapter I-13.3) or the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14), the Comité de gestion de la taxe scolaire de l'île de Montréal, and general and vocational colleges established by the General and Vocational Colleges Act (chapter C-29);
 - (6) university-level educational institutions listed in paragraphs 1 to 11 of section 1 of the Act respecting educational institutions at the university level (chapter E-14.1);
 - (7) public institutions and private institutions under agreement within the meaning of the Act respecting health services and social services (chapter S-4.2)

as well as the regional council established under the Act respecting health services and social services for Cree Native persons (chapter S-5);

(8) persons appointed or designated by the National Assembly to an office under its jurisdiction, together with the personnel directed by them;

(9) childcare centres, day care centres benefiting from subsidized childcare spaces and home childcare coordinating offices governed by the Educational Childcare Act (chapter S-4.1.1); and

(10) any other entity designated by the Government.

3. This Act applies to the National Assembly to the extent and on the conditions determined by regulation of the Office of the National Assembly.

4. For the purposes of this Act, any act that constitutes or consists in, as the case may be,

(1) a contravention of a Québec law, of a federal law applicable in Québec or of a regulation made under such a law,

(2) a serious breach of the standards of ethics and professional conduct,

(3) a misuse of funds or property belonging to a public body, including the funds or property it manages or holds for others,

(4) gross mismanagement within a public body, including an abuse of authority,

(5) any act or omission that seriously compromises or may seriously compromise a person's health or safety or the environment, or

(6) directing or counselling a person to commit a wrongdoing described in any of paragraphs 1 to 5,

is considered a wrongdoing.

5. This Act does not apply to a disclosure made for personal purposes rather than in the public interest, such as when the subject-matter pertains solely to a condition of employment of the person making the disclosure, nor does it apply to a disclosure whose purpose is to question the merits of the policies and program objectives of the Government or of a public body. The same is true for a disclosure whose purpose is to question the effectiveness, efficiency or merits of strategies, policy directions and operations related to the investment activities, fund management activities or debt management activities of the Caisse de dépôt et placement du Québec or Investissement Québec.

CHAPTER II

DISCLOSURE OF WRONGDOINGS

6. Any person may, at any time, contact the Public Protector to disclose information that could show that a wrongdoing has been committed or is about to be committed in relation to a public body. Wrongdoings include, in particular, those committed by a member of the personnel of a public body in the exercise of his or her functions or by any person, partnership, group or other entity in the preparation or performance of a contract, including a grant of financial assistance, that has been entered into or is about to be entered into with the public body. A disclosure may be made anonymously or not.

In the case of a disclosure concerning a public body referred to in paragraph 9 of section 2, a person may, if he or she prefers, contact the Minister of Families in accordance with Chapter VII.2 of the Educational Childcare Act to disclose the information.

In the case of a disclosure concerning a public body referred to in any of paragraphs 1 to 8 and 10 of section 2, a person who is a member of the personnel of the public body may, if he or she prefers, contact the officer responsible for dealing with disclosures within that body to disclose the information.

7. If a person has reasonable grounds to believe that a wrongdoing committed or about to be committed poses a serious risk to a person's health or safety or to the environment and cannot, given the urgency of the situation, contact one of the persons referred to in section 6, that person may disclose to the public any information he or she considers reasonably necessary to avoid that risk and may enjoy the protection against reprisals provided for in Chapter VII.

However, before doing so, that person must communicate the information to a police force or to the Anti-Corruption Commissioner. In addition, the communication of information must not have the foreseeable effect of hindering intervention measures intended to avoid serious risk to a person's health or safety or to the environment.

8. A person making a disclosure or cooperating in an audit or investigation conducted on the basis of a disclosure may communicate, in accordance with this Act, any information that could show that a wrongdoing has been committed or is about to be committed.

The first paragraph applies despite the provisions on the communication of information provided for in the Act respecting the protection of personal information in the private sector (chapter P-39.1) and the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), except those provided for in section 33 of the latter Act. It also applies despite any other communication restrictions under a law and any duty of confidentiality or loyalty that may be binding on the person, including toward an employer or, if applicable, a client.

However, the lifting of professional secrecy authorized under this section does not apply to professional secrecy between a lawyer or a notary and a client.

9. Any person may contact the Public Protector to obtain information about the possibility of making a disclosure in accordance with this Act, to obtain advice on the procedure for making a disclosure or to obtain the legal advice provided for in section 26.

CHAPTER III

DISCLOSURES TO AND INVESTIGATIONS BY THE PUBLIC PROTECTOR

10. A disclosure of wrongdoing is made to the Public Protector and diligently processed in accordance with the procedure the Public Protector determines. The procedure must, among other things,

(1) provide for a written notice of receipt of the disclosed information to be sent to the person who made the disclosure, if that person's identity is known;

(2) specify the manner in which a disclosure is to be filed;

(3) determine the time limits for processing a disclosure;

(4) subject to section 14, include all necessary measures to ensure that the identity of the person who makes a disclosure or cooperates in an audit or investigation conducted on the basis of a disclosure remains confidential;

(5) include measures to protect the rights of the persons involved in a disclosure, in particular during an investigation; and

(6) state the protection provided for by Chapter VII against reprisals and the time limit for exercising a recourse against a practice prohibited by subparagraph 11 of the first paragraph of section 122 of the Act respecting labour standards (chapter N-1.1).

For the purposes of subparagraph 3 of the first paragraph, the procedure must provide that the person who made the disclosure, if that person's identity is known, is notified as soon as the processing of the disclosure has been completed. The Public Protector notifies the person who made the disclosure if its processing must continue beyond 60 days after the date on which it was received. The Public Protector must subsequently notify the person, every 90 days, that the processing of the disclosure is ongoing, until the Public Protector puts an end to it. The Public Protector sends such notices in writing.

The Public Protector sees to the dissemination of the procedure.

11. If the Public Protector receives a disclosure or has reasonable grounds to believe that a wrongdoing has been committed or is about to be committed, the Public Protector makes the verifications the Public Protector considers appropriate.

In addition, the Public Protector may conduct an investigation or designate any person referred to in section 25 of the Public Protector Act (chapter P-32) to conduct an investigation on the Public Protector's behalf. The Public Protector may, in writing, give a person who is not a member of the Public Protector's personnel a mandate to examine a disclosure and, if applicable, conduct an investigation or any other specific mandate related to any of the Public Protector's functions. The Public Protector may delegate the exercise of any of the Public Protector's powers to such a person, provided that person agrees to be bound by confidentiality requirements equivalent to those that apply to the Public Protector's personnel. Section 25 of the Public Protector Act applies, with the necessary modifications, to such a person conducting an investigation.

The public body concerned must cooperate with the Public Protector.

12. At any time, the Public Protector must put an end to the processing of a disclosure if the alleged wrongdoing is the subject of court proceedings or relates to a decision rendered by a court.

In addition, the Public Protector puts an end to the examination of a disclosure if of the opinion, in particular,

(1) that the subject-matter of the disclosure does not fall within the Public Protector's mandate;

(2) that the disclosure is made for personal purposes and not in the public interest;

(3) that the subject-matter of the disclosure questions the merits of the policies and program objectives of the Government or of a public body;

(4) that the subject-matter of the disclosure questions the effectiveness, efficiency or merits of strategies, policy directions and operations related to the investment activities, fund management activities or debt management activities of the Caisse de dépôt et placement du Québec or Investissement Québec; or

(5) that the disclosure is frivolous.

When putting an end to the processing or examination of a disclosure, the Public Protector sends a notice, with reasons, to the person who made the disclosure, if the person's identity is known.

13. In the case of an investigation, the Public Protector may, if the Public Protector considers it appropriate, inform the highest ranking administrative

official of the public body concerned or, if warranted by the circumstances, the minister responsible for that body that an investigation is being conducted and advise him or her of its subject-matter.

In the case of a public body referred to in paragraph 9 of section 2, the Public Protector may, if the Public Protector deems it appropriate, inform the Minister of Families.

For the purposes of this Act, the highest ranking administrative official is the official responsible for the day-to-day management of the public body, such as the deputy minister, the chair or the director general. However, in the case of a public body referred to in paragraph 5 of section 2, the highest ranking administrative official is the board of directors or, in the case of a school board, the council of commissioners. Such a board or council may delegate to the director general all or part of the functions conferred on the highest ranking administrative official.

14. If the Public Protector considers that information disclosed to the Public Protector may be disclosed under section 26 of the Anti-Corruption Act (chapter L-6.1), the Public Protector forwards the information, as soon as possible, to the Anti-Corruption Commissioner. The Public Protector also forwards the information necessary to prosecute an offence under an Act to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order.

The Public Protector puts an end to the examination or processing of the disclosure, or continues it, according to the terms agreed to with the body to which the Public Protector has forwarded the information.

If the Public Protector considers it appropriate, the Public Protector notifies the person who made the disclosure that the information has been forwarded.

15. Once the audit or investigation has been concluded, the Public Protector reports the findings to the highest ranking administrative official of the public body concerned or, if warranted by the circumstances, to the minister responsible for that body. The Public Protector makes the recommendations the Public Protector considers appropriate and may ask to be informed, within a specified time, of the corrective measures taken to implement them.

However, in the case of a public body referred to in paragraph 9 of section 2, the Public Protector reports the Public Protector's findings to the Minister of Families and, if warranted by the circumstances, to the board of directors of the public body concerned or to the natural person who is the holder of a day care centre permit.

If the Public Protector considers it appropriate, the Public Protector may inform the person who made the disclosure of any follow-up given to the disclosure.

16. If, after making recommendations, the Public Protector considers that the public body has failed to take satisfactory measures within a reasonable time, the Public Protector must notify the minister responsible for that body in writing. If the Public Protector sees fit, the Public Protector may subsequently notify the Government in writing and outline the case in a special report or in the Public Protector's annual report to the National Assembly.

17. The Public Protector includes, in the activity report referred to in section 28 of the Public Protector Act,

- (1) the number of disclosures received;
- (2) the number of disclosures whose processing or examination was ended under section 12;
- (3) the number of undertaken, ongoing or concluded investigations;
- (4) the number of well-founded disclosures;
- (5) the number of disclosures broken down according to the categories of wrongdoings set out in section 4;
- (6) the number of persons who were given access to legal advice;
- (7) the number of complaints received regarding reprisals;
- (8) the number of well-founded complaints regarding reprisals;
- (9) the number of times information was forwarded under the first paragraph of section 14; and
- (10) any recommendations the Public Protector deems appropriate.

The Public Protector must also report on whether the time limits for the processing of disclosures were complied with.

CHAPTER IV

DISCLOSURES WITHIN A PUBLIC BODY

18. A procedure to facilitate employee disclosures of wrongdoings is established and made known within each public body, other than a body referred to in paragraph 9 of section 2, by the highest ranking administrative official. In addition, that official designates a person as the officer responsible for dealing with such disclosures and for implementing the procedure within the body (the "designated officer").

19. The Public Protector may exempt the highest ranking administrative official of a public body from the obligations set out in section 18, in particular

by reason of the body's size or available resources. If so exempted, the highest ranking administrative official must take all necessary measures to inform the employees that they may contact the Public Protector to disclose a wrongdoing.

20. The wrongdoing disclosure procedure provided for in section 18 must, among other things, include the elements set out in the first paragraph of section 10, with the necessary modifications. It must also mention that employees have the option of communicating information to the Public Protector or to the designated officer within the public body.

The Public Protector is to publish a reference document for public bodies on the procedure to be established.

21. The designated officer is bound to confidentiality in exercising the functions of office and must, among other things, take the measures necessary to ensure that any information communicated to him or her, including the identity of the person who made the disclosure, remains confidential.

Despite sections 9, 83 and 89 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no one may have access to or rectify information communicated to the designated officer.

22. On receipt of a disclosure by an employee, the designated officer, as the case may be,

(1) verifies whether a wrongdoing has been committed or is about to be committed;

(2) forwards the disclosure to the Public Protector if, in the officer's opinion, the Public Protector, given the circumstances, is better suited to deal with it and notifies the employee accordingly; or

(3) puts an end to the processing or examination of the disclosure in any of the cases and in accordance with the conditions set out in section 12.

23. If the designated officer considers that information disclosed to him or her may be disclosed under section 26 of the Anti-Corruption Act, he or she forwards the information, as soon as possible, to the Anti-Corruption Commissioner. The designated officer also forwards the information necessary to prosecute an offence under an Act to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order.

The designated officer puts an end to the examination or processing of the disclosure, or continues it, according to the terms agreed to with the body to which he or she has forwarded the information.

If the designated officer considers it appropriate, he or she notifies the employee who made the disclosure that the information has been forwarded.

24. The designated officer keeps the highest ranking administrative official of the public body informed of the steps taken, unless, in the designated officer's opinion, the disclosure is likely to implicate that official.

On ascertaining that a wrongdoing has been committed or is about to be committed, the designated officer reports as much to the highest ranking administrative official. If necessary, the latter takes the corrective measures he or she deems appropriate.

If the designated officer considers it appropriate, he or she may inform the person who made the disclosure of any follow-up given to the disclosure.

25. A public body required to establish and disseminate a procedure to facilitate the disclosure of wrongdoings by its employees must include, in its annual report,

- (1) the number of disclosures received by the designated officer;
- (2) the number of disclosures the processing or examination of which was ended under paragraph 3 of section 22;
- (3) the number of well-founded disclosures;
- (4) the number of disclosures broken down according to the categories of wrongdoings set out in section 4; and
- (5) the number of times information was forwarded under the first paragraph of section 23.

If a public body does not make an annual report, it uses another means it considers appropriate to make this information public once a year.

CHAPTER V

LEGAL ADVICE

26. The Public Protector provides access to legal advice to any person making or wishing to make a disclosure or cooperating in an audit or investigation conducted on the basis of a disclosure made under Chapters II to IV of this Act or Chapter VII.2 of the Educational Childcare Act.

Access to legal advice may also be provided to a person referred to in the first paragraph if that person believes a reprisal has been taken against him or her for having, in good faith, made a disclosure or cooperated in an audit or investigation conducted on the basis of a disclosure, unless the reprisal constitutes a practice prohibited by subparagraph 11 of the first paragraph of section 122 of the Act respecting labour standards.

To be provided with such access to legal advice, a person must, in the Public Protector's opinion, be in a special situation that warrants legal assistance, for example because of the nature of the person's disclosure or of the person's cooperation in an audit or investigation.

The Public Protector determines, in each case, the manner in and time for which access to legal advice is to be provided.

CHAPTER VI

POWERS AND IMMUNITY

27. No judicial proceedings may be brought against a designated officer for any act done in good faith in the exercise of the functions of office.

28. Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be brought nor any injunction granted against a designated officer in the exercise of the functions of office.

A judge of the Court of Appeal may, on an application, summarily annul any judgment, decision, order or injunction rendered or granted contrary to the first paragraph.

29. Sections 24, 25, 27.3, 27.4, 29 to 33, 34 and 35 of the Public Protector Act apply to the Public Protector, with the necessary modifications, with regard to investigations the Public Protector conducts and other acts the Public Protector carries out under this Act.

CHAPTER VII

PROTECTION AGAINST REPRISALS

30. It is forbidden to take a reprisal against a person on the ground that the person has, in good faith, made a disclosure or cooperated in an audit or investigation conducted on the basis of a disclosure.

It is also forbidden to threaten to take a reprisal against a person so that the person will abstain from making a disclosure or cooperating in an audit or investigation conducted on the basis of a disclosure.

31. The following is presumed to be a reprisal within the meaning of section 30:

(1) the demotion, suspension, dismissal or transfer of a person referred to in that section or any other disciplinary measure or measure that adversely affects such a person's employment or conditions of employment; or

(2) if such a person is the holder of parental authority over a child attending a childcare establishment referred to in paragraph 9 of section 2, depriving the person of any right or subjecting the person to differential treatment or suspending or expelling the person's child.

32. Any person who believes a reprisal referred to in section 30 has been taken against him or her may file a complaint with the Public Protector in order to have the Public Protector examine whether the complaint is well-founded and submit any recommendations the Public Protector considers appropriate to the highest ranking administrative official within the public body concerned or, if warranted by the circumstances, to the minister responsible for the public body. However, in the case of a public body referred to in paragraph 9 of section 2, such recommendations are to be sent to the Minister of Families and, if warranted by the circumstances, to the board of directors of the public body concerned or the natural person holding the day care centre permit.

Sections 11 to 16 apply to the follow-up of such complaints, with the necessary modifications.

However, if the reprisal a person believes has been taken against him or her constitutes a practice prohibited by subparagraph 11 of the first paragraph of section 122 of the Act respecting labour standards, the Public Protector refers that person to the Commission des normes, de l'équité, de la santé et de la sécurité du travail and puts an end to the examination of the complaint.

CHAPTER VIII

PENAL PROVISIONS

33. Anyone who contravenes section 30 is guilty of an offence and is liable to a fine of \$2,000 to \$20,000 in the case of a natural person and to a fine of \$10,000 to \$250,000 in all other cases.

The amounts are doubled for a subsequent offence.

34. Anyone who hinders or attempts to hinder the Public Protector or a designated officer in the exercise of the functions of office, refuses to provide any information or a document they are required to provide or refuses to make it available, or conceals or destroys any document relevant to an audit or investigation is guilty of an offence and is liable to a fine of \$4,000 to \$20,000.

The amounts are doubled for a subsequent offence.

35. Anyone, including a director or officer of a legal person or of an employer who, by an act or omission, helps a person to commit an offence under section 33 or 34 or who, by encouragement, advice or consent or by an authorization or order, induces another person to commit such an offence is guilty of the same offence.

CHAPTER IX

AMENDING PROVISIONS

TAX ADMINISTRATION ACT

36. Section 69.0.0.16 of the Tax Administration Act (chapter A-6.002) is replaced by the following section:

“69.0.0.16. Information contained in a tax record may be communicated, without the consent of the person concerned, to a person where the communication is necessary for the application or enforcement of a fiscal law, to a police force where an employee of the Agency believes on reasonable grounds that the person concerned has committed or is about to commit, in respect of the Agency or one of its employees or with respect to the application of a fiscal law, a criminal or penal offence and the information is necessary for the investigation relating to that offence, or to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force and a professional order, where the communication is necessary for the purposes of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34).”

37. Section 69.1 of the Act is amended by replacing subparagraph *i* of the second paragraph by the following subparagraph:

“(i) the Public Protector, in respect of interventions and investigations conducted under the Public Protector Act (chapter P-32) or where the information is necessary for the application of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34);”.

38. Section 69.3 of the Act is amended by inserting the following paragraph after the first paragraph:

“Despite the first paragraph, a person to whom information is communicated under section 69.1 or 69.2 may, without the consent of the person concerned, use the information for the purposes of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34).”

39. The Act is amended by inserting the following section after section 69.4.1:

“69.4.2. The Public Protector may communicate information necessary for the application of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34) obtained under subparagraph *i* of the second paragraph of section 69.1 or the first paragraph of section 69.6 to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force and a professional order, where the communication is necessary to prosecute an offence under an Act or to the Anti-Corruption Commissioner if the information may potentially be disclosed under section 26 of the Anti-Corruption Act (chapter L-6.1).”

40. Section 69.6 of the Act is amended by adding the following paragraphs at the end:

“In addition, a person to whom information is communicated under section 69.1 or 69.2 may, without the consent of the person concerned, communicate the information either to the designated officer in accordance with the third paragraph of section 6 of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34) or to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force and a professional order, or the Anti-Corruption Commissioner in accordance with section 23 of that Act.

A designated officer to whom information is communicated under the second paragraph may, without the consent of the person concerned, communicate the information either to the Public Protector in accordance with paragraph 2 of section 22 of the Act to facilitate the disclosure of wrongdoings relating to public bodies or to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force and a professional order, or the Anti-Corruption Commissioner in accordance with section 23 of that Act.”

CHARTER OF VILLE DE MONTRÉAL

41. Section 57.1.13 of the Charter of Ville de Montréal (chapter C-11.4) is amended by replacing the third paragraph by the following paragraph:

“However, the lifting of professional secrecy authorized under the second paragraph does not apply to professional secrecy between a lawyer or a notary and a client.”

ANTI-CORRUPTION ACT

42. Section 27 of the Anti-Corruption Act (chapter L-6.1) is amended by replacing the second paragraph by the following paragraph:

“However, the lifting of professional secrecy authorized under this Act does not apply to professional secrecy between a lawyer or a notary and a client.”

ACT RESPECTING LABOUR STANDARDS

43. Section 3.1 of the Act respecting labour standards (chapter N-1.1) is amended by replacing “and 10” in the second paragraph by “, 10 and 11”.

44. Section 122 of the Act is amended by adding the following subparagraph after subparagraph 10 of the first paragraph:

“(11) on the ground that the employee has, in good faith, disclosed a wrongdoing or that the employee has cooperated in an audit or investigation regarding such a wrongdoing in accordance with the Act to facilitate the

disclosure of wrongdoings relating to public bodies (2016, chapter 34) or Chapter VII.2 of the Educational Childcare Act (chapter S-4.1.1).”

45. Section 140 of the Act is amended by replacing “and 10” in paragraph 6 by “, 10 and 11”.

PUBLIC PROTECTOR ACT

46. Section 11 of the Public Protector Act (chapter P-32) is amended by inserting “, the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34)” after “this Act” in the first paragraph.

47. Section 13 of the Act is amended by inserting “assigned to the Public Protector under the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34), as well as those” after “functions” in the third paragraph.

EDUCATIONAL CHILDCARE ACT

48. The Educational Childcare Act (chapter S-4.1.1) is amended by inserting the following after section 101.20:

“CHAPTER VII.2

“DISCLOSURE OF WRONGDOINGS AND PROTECTION AGAINST REPRISALS

“DIVISION I

“DISCLOSURE

“**101.21.** Any person may, at any time, contact the Minister to disclose information that could show that a wrongdoing, within the meaning of section 4 of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34), has been committed or is about to be committed in relation to a permit holder delivering subsidized childcare or a home childcare coordinating office.

Wrongdoings include, in particular, acts committed or about to be committed by a staff member, director or shareholder of a day care permit holder delivering subsidized childcare or by a home childcare coordinating office, in the exercise of his, her or its functions or by any person, partnership, group or other entity in the preparation or performance of a contract, including a grant of financial assistance, that has been entered into or is about to be entered into with a day care permit holder delivering subsidized childcare or a home childcare coordinating office.

A disclosure may be made anonymously or not.

“101.22. A person making a disclosure or cooperating in an inspection or investigation conducted on the basis of a disclosure may communicate, in accordance with this Act, any information that could show that a wrongdoing has been committed or is about to be committed.

The first paragraph applies despite the provisions on the communication of information in the Act respecting the protection of personal information in the private sector (chapter P-39.1). It also applies despite any other communication restrictions under a law and any duty of confidentiality or loyalty that may be binding on the person, including toward an employer or, if applicable, a client.

However, the lifting of professional secrecy authorized under this section does not apply to professional secrecy between a lawyer or a notary and a client.

“101.23. Any person may contact the Minister to obtain information about the possibility of making a disclosure in accordance with this chapter or to obtain advice on the procedure for making a disclosure.

“DIVISION II

“FOLLOW-UP OF DISCLOSURES BY THE MINISTER

“101.24. A disclosure of wrongdoing is made to the Minister and diligently processed in accordance with the procedure the Minister determines. The procedure must, among other things,

- (1) provide for a written notice of receipt of the disclosed information to be sent to the person who made the disclosure, if that person’s identity is known;
- (2) specify the manner in which a disclosure is to be filed;
- (3) determine the time limits for processing a disclosure;
- (4) state that any person may disclose information to the Public Protector or the Minister;
- (5) subject to section 101.28, include all necessary measures to ensure that the identity of the person who makes a disclosure or cooperates in an inspection or investigation conducted on the basis of a disclosure remains confidential;
- (6) include measures to protect the rights of the persons involved in a disclosure, in particular during an inspection or investigation; and
- (7) state the protection provided for by Division III of this chapter against reprisals and the time limit for exercising a recourse against a practice prohibited by subparagraph 11 of the first paragraph of section 122 of the Act respecting labour standards (chapter N-1.1).

For the purposes of subparagraph 3 of the first paragraph, the procedure must provide that the person who made the disclosure, if that person's identity is known, is notified as soon as the processing of the disclosure has been completed. The Minister notifies the person who made the disclosure if its processing must continue beyond 60 days after the date on which it was received. The Minister must subsequently notify the person, every 90 days, that the processing of the disclosure is ongoing, until the Minister puts an end to it. The Minister sends such notices in writing.

The Minister sees to the dissemination of the procedure.

“101.25. If the Minister receives a disclosure or has reasonable grounds to believe that a wrongdoing has been committed or is about to be committed, the Minister designates any person referred to in section 72 or 80 to conduct, as the case may be, the inspections or investigations the Minister considers appropriate.

“101.26. Any person designated under section 101.25 is bound to confidentiality in exercising the functions of office and must, among other things, take the necessary measures to ensure that any information communicated to him or her, including the identity of the person who made the disclosure, remains confidential.

Despite sections 9, 83 and 89 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one may have access to or rectify information communicated to the Minister.

“101.27. At any time, the Minister must put an end to the processing of a disclosure if the alleged wrongdoing is the subject of court proceedings or relates to a decision rendered by a court.

In addition, the Minister puts an end to the examination of a disclosure if of the opinion, in particular,

(1) that the subject-matter of the disclosure does not fall within the Minister's mandate;

(2) that the disclosure is made for personal purposes and not in the public interest;

(3) that the subject-matter of the disclosure questions the merits of the policies and program objectives of the Government; or

(4) that the disclosure is frivolous.

When putting an end to the processing or examination of a disclosure, the Minister sends a notice, with reasons, to the person who made the disclosure, if the person's identity is known.

“101.28. If the Minister considers that information disclosed to the Minister may be disclosed under section 26 of the Anti-Corruption Act (chapter L-6.1), the Minister forwards the information, as soon as possible, to the Anti-Corruption Commissioner. The Minister also forwards the information necessary to prosecute an offence under an Act to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order.

The Minister puts an end to the examination or processing of the disclosure, or continues it, according to the terms agreed to with the body to which the Minister has forwarded the information.

If the Minister considers it appropriate, the Minister notifies the person who made the disclosure that the information has been forwarded.

“101.29. Once the inspection or investigation has been concluded, the Minister may take any measure provided for in this Act that the Minister considers appropriate against the permit holder or home childcare coordinating office.

If the Minister considers it appropriate, the Minister may inform the person who made the disclosure of any follow-up given to the disclosure.

“101.30. The Minister includes, in the annual management report referred to in section 11 of the Act respecting the Ministère de la Famille, des Aînés et de la Condition féminine (chapter M-17.2),

- (1) the number of disclosures received;
- (2) the number of disclosures whose processing or examination was ended under section 101.27;
- (3) the number of undertaken, ongoing or concluded investigations;
- (4) the number of well-founded disclosures, including those entailing corrective measures;
- (5) the number of disclosures under section 101.21, broken down according to the categories of wrongdoings set out in section 4 of the Act to facilitate the disclosure of wrongdoings relating to public bodies (2016, chapter 34); and
- (6) the number of times information was forwarded under the first paragraph of section 101.28.

The Minister must also report on whether the time limits for the processing of disclosures were complied with.

“DIVISION III**“PROTECTION AGAINST REPRISALS**

“101.31. It is forbidden to take a reprisal against a person on the ground that the person has, in good faith, made a disclosure or cooperated in an inspection or investigation conducted on the basis of a disclosure.

It is also forbidden to threaten to take a reprisal against a person so that the person will abstain from making a disclosure or cooperating in an inspection or investigation conducted on the basis of a disclosure.

“101.32. The following is presumed to be a reprisal within the meaning of section 101.31:

(1) the demotion, suspension, dismissal or transfer of a person referred to in that section or any other disciplinary measure or measure that adversely affects such a person’s employment or conditions of employment; or

(2) if such a person is the parent of a child attending a childcare centre or a day care centre delivering subsidized childcare, depriving the person of any right or subjecting the person to differential treatment or suspending or expelling the person’s child.

“101.33. Any person who believes a reprisal referred to in section 101.31 has been taken against him or her may file a complaint with the Minister in order to have the Minister examine whether the complaint is well-founded and take, if applicable, any measure provided for by this Act that the Minister considers appropriate in relation to the permit holder or home childcare coordinating office concerned. Sections 101.25 to 101.29 apply to the follow-up of such complaints, with the necessary modifications.

However, if the reprisal a person believes has been taken against him or her constitutes a practice prohibited by subparagraph 11 of the first paragraph of section 122 of the Act respecting labour standards (chapter N-1.1), the Minister refers that person to the Commission des normes, de l’équité, de la santé et de la sécurité du travail and puts an end to the examination of the complaint.”

49. Section 109 of the Act is amended by striking out “section 78.”

50. The Act is amended by inserting the following section after section 115:

“115.1. A person that contravenes section 78 is guilty of an offence and is liable to a fine of \$4,000 to \$20,000.”

51. The Act is amended by inserting the following sections after section 117:

“117.1. A person that contravenes section 101.31 is guilty of an offence and is liable to a fine of \$2,000 to \$20,000 in the case of a natural person and \$10,000 to \$250,000 in all other cases.

“117.2. A person, including a director or a shareholder of a permit holder delivering subsidized childcare or a home childcare coordinating office, that, by an act or omission, helps a person to commit an offence under section 115.1 or 117.1 or that, by encouragement, advice or consent or by an authorization or order, induces another person to commit such an offence is guilty of the same offence.”

52. Sections 118 and 119 of the Act are amended by replacing “117” by “117.2”.

CHAPTER X

TRANSITIONAL AND FINAL PROVISIONS

53. The new provisions of section 57.1.13 of the Charter of Ville de Montréal (chapter C-11.4) and section 27 of the Anti-Corruption Act (chapter L-6.1), respectively enacted by sections 41 and 42 of this Act, are declaratory.

54. The Minister must, within three years after the coming into force of section 1, report to the Government on the implementation of this Act and on the advisability of maintaining or amending it. For that purpose, each public body must, on the Minister’s request, communicate to the Minister the number of disclosures received, the number of well-founded disclosures and the number of disclosures the processing of which was ended under paragraph 3 of section 22.

The report is tabled by the Minister in the National Assembly within 30 days or, if the Assembly is not sitting, within 30 days of resumption.

The report must be referred to the competent parliamentary committee for consideration within 15 days after its tabling in the National Assembly.

55. The minister who is Chair of the Conseil du trésor is responsible for the administration of this Act.

56. The provisions of this Act come into force on 1 May 2017.