



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 496

Whistleblower Protection Act

Introduction

Introduced by
Madam Manon Massé
Member for Sainte-Marie–Saint-Jacques

Québec Official Publisher
2015

EXPLANATORY NOTES

The purpose of this bill is to establish a procedure facilitating the disclosure of wrongdoings and to protect persons making such disclosures, in both the public and private sectors.

Reprisals are prohibited against persons who disclose wrongdoings or communicate information concerning wrongdoings.

The bill creates the position of Integrity Commissioner, who is mandated to administer it. It also contains provisions concerning the Integrity Commissioner's powers in disclosure-related matters, including the power to conduct investigations into alleged wrongdoings.

Under the bill, certain persons are entitled to access to legal advice when making a disclosure.

Lastly, the bill contains penal, amending and final provisions.

LEGISLATION AMENDED BY THIS BILL:

- Anti-Corruption Act (chapter L-6.1);
- Act respecting labour standards (chapter N-1.1).

Bill 496

WHISTLEBLOWER PROTECTION ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE

1. The purpose of this Act is to establish a procedure facilitating the disclosure of wrongdoings and to protect persons making such disclosures.

CHAPTER II

INTERPRETATION

2. For the purposes of this Act, “wrongdoing” means

(1) a contravention of a federal or Québec law or a by-law or regulation made under such a law;

(2) a misuse of funds or property or a case of gross mismanagement;

(3) an organizational or individual decision, activity or practice that compromises the longevity, integrity or financial soundness of a body or an enterprise, or that violates an Act, a by-law or a regulation, or that is contrary to the principles of economy, efficiency and effectiveness set out in section 21 of the Auditor General Act (chapter V-5.01);

(4) an act or omission that seriously endangers the life, health or safety of persons or the environment; or

(5) directing or counselling a person to commit a wrongdoing set out in any of paragraphs 1 to 4.

CHAPTER III

DISCLOSURE OF WRONGDOINGS

DIVISION I

DISCLOSURE PROCEDURE

3. A person who wishes to disclose a wrongdoing may do so by communicating information to the Integrity Commissioner that the person believes could show that a wrongdoing has been committed or is about to be committed, or that the person making the disclosure has been asked to commit such a wrongdoing.

4. A person who discloses a wrongdoing may do so despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Act respecting the protection of personal information in the private sector (chapter P-39.1), other communication restrictions under other laws of Québec or a duty of loyalty or confidentiality that may be binding on the person, in particular with respect to an employer or a client.

This Act does not however authorize a person making a disclosure to communicate information that is protected by professional secrecy between an advocate or a notary and a client to the Integrity Commissioner.

5. On receiving a disclosure, the Integrity Commissioner or a member of the Integrity Commissioner's personnel examines it and determines the action to take.

6. The Integrity Commissioner may take further action regarding a disclosure by conducting an investigation into whether a wrongdoing has been committed.

7. The Integrity Commissioner may refuse to take further action regarding a disclosure or to continue an investigation if of the opinion that

(1) the disclosure under section 3 is frivolous or does not fall within the Integrity Commissioner's mission;

(2) a procedure provided for under another Act could more appropriately deal with the subject matter of the disclosure or investigation;

(3) the subject matter of the disclosure or investigation is not sufficiently important;

(4) the disclosure under section 3 is not in good faith;

(5) too much time has elapsed since the acts disclosed or under investigation were committed; or

(6) another valid reason determined by regulation warrants it.

8. The Integrity Commissioner may not take further action regarding a disclosure under this Act if a person or body, other than a law enforcement authority, acting under another Act is dealing with the subject matter of the disclosure.

9. The Integrity Commissioner must refuse to take further action regarding a disclosure or to continue an investigation if of the opinion that the subject matter of the disclosure or investigation relates to a decision made under an Act in the exercise of a judicial or quasi-judicial function.

10. If the Integrity Commissioner refuses to take further action regarding a disclosure or to continue an investigation, the Integrity Commissioner notifies the person who made the disclosure.

DIVISION II

INVESTIGATIONS INTO WRONGDOINGS

11. In addition to conducting an investigation following a disclosure, the Integrity Commissioner may take the initiative to conduct an investigation if the Integrity Commissioner has grounds to believe that a wrongdoing has been committed.

12. The Integrity Commissioner may act or authorize a person to act as an investigator for the purposes of this Act.

Persons acting as investigators may

(1) at any reasonable time of day, enter the establishment of the alleged perpetrator of the wrongdoing disclosed or the establishment where he or she engages in his or her activities or exercises his or her functions;

(2) require the persons present to provide information concerning the activities engaged in or the functions exercised by the alleged perpetrator of the wrongdoing disclosed, and to produce any relevant book, register, account, record or other document; and

(3) examine and make copies of documents containing information concerning the activities engaged in or the functions exercised by the alleged perpetrator of the wrongdoing disclosed.

A person who has custody, possession or control of the documents referred to in this section must, on request, disclose them to the person conducting the investigation and facilitate their examination.

13. Persons authorized by the Integrity Commissioner to act as investigators must, on request, identify themselves and produce a certificate of authorization.

14. After deciding to conduct an investigation, the Integrity Commissioner may notify any person, including the alleged perpetrator of the wrongdoing disclosed and, if applicable, the latter's chief executive officer or supervisor or, if the alleged perpetrator is the chief executive officer of a legal person, the board of directors, of the investigation and of the subject matter of the disclosure in question.

15. After the investigation, the Integrity Commissioner produces a report recommending corrective measures to take, and sends the report to the chief executive officer or the supervisor of the alleged perpetrator of the wrongdoing disclosed, or to the board of directors, as applicable.

The report also specifies the time limit for implementing the corrective measures.

The Integrity Commissioner sends a copy of the report to the person who made the disclosure under section 3.

16. The Integrity Commissioner submits investigation reports concluding that a wrongdoing was committed or was about to be committed to the Director of Criminal and Penal Prosecutions.

DIVISION III

PROTECTION AGAINST REPRISALS

17. The Integrity Commissioner ensures that the rights of persons involved as a result of a disclosure, including the person making the disclosure, witnesses and the alleged perpetrator of the wrongdoing, are respected.

18. The Integrity Commissioner must take all necessary measures to protect the anonymity of persons making disclosures but may communicate their identity to the Director of Criminal and Penal Prosecutions.

19. Reprisals are prohibited against persons making disclosures or cooperating in the investigation of a wrongdoing, as are threats of reprisal against a person to dissuade the person from making a disclosure or cooperating in an investigation.

20. The demotion, suspension, termination of employment or transfer of a person referred to in section 19 or any disciplinary or other measure that adversely affects the employment or working conditions of such a person is presumed to be a reprisal.

DIVISION IV

ACCESS TO LEGAL ADVICE

21. The Integrity Commissioner may make legal advice available to persons who

- (1) are considering disclosing a wrongdoing under this Act;
- (2) are considering communicating information to the Integrity Commissioner concerning an act or omission likely to constitute a wrongdoing under this Act;
- (3) have made a disclosure under this Act; or
- (4) are or have been involved in an investigation conducted by or on behalf of the Integrity Commissioner under this Act.

The Integrity Commissioner may make legal advice available only to persons who do not otherwise have access to it free of charge.

Moreover, the Integrity Commissioner may make legal advice available to a person referred to in subparagraph 1 or 2 of the first paragraph only if the Integrity Commissioner is of the opinion that the act or omission which the disclosure or the information concerns is likely to constitute a wrongdoing under this Act and could lead to an investigation under it.

22. The fees that can be paid by the Integrity Commissioner under section 21 for legal advice made available to a person concerning an act or omission likely to constitute a wrongdoing, as well as the related terms and conditions, are determined by regulation.

23. Relations between persons to whom legal advice is made available under section 21 and the legal counsel providing the advice are advocate-client relations.

CHAPTER IV

INTEGRITY COMMISSIONER

DIVISION I

APPOINTMENT

24. On a joint motion of the Premier and the Leader of the Official Opposition, after consulting with the Leaders of the other authorized parties represented in the National Assembly, and with the approval of two thirds of the Members, the National Assembly appoints an Integrity Commissioner.

The Assembly determines the remuneration, employment benefits and other conditions of employment of the Integrity Commissioner in the same manner.

25. The Integrity Commissioner exercises the functions of office on a full-time basis, focussing on information, prevention, confidentiality, objectivity and impartiality.

The Integrity Commissioner also exercises any other function conferred on the Integrity Commissioner by law.

26. The Integrity Commissioner is appointed for a fixed term, which may not exceed five years. At the end of the term, the Integrity Commissioner remains in office until reappointed or replaced.

The Integrity Commissioner may resign at any time by giving written notice to the President of the National Assembly. The Integrity Commissioner may be removed from office only by a resolution of the Assembly approved by two thirds of the Members.

27. If the Integrity Commissioner ceases to hold office or is unable to act, the Government, after consulting with the Leaders of the authorized parties represented in the National Assembly, may designate a person to act as Integrity Commissioner for a period not exceeding six months. The Government determines the designated person's remuneration and conditions of employment.

28. Before entering office, the Integrity Commissioner must take the oath provided in the schedule to this Act before the President of the National Assembly.

29. The Integrity Commissioner must avoid placing himself or herself in a situation involving a direct or indirect conflict between the Integrity Commissioner's personal interests and the duties of office.

30. Subject to the appropriations voted by the Office of the National Assembly, the Integrity Commissioner determines the personnel required for the exercise of the Integrity Commissioner's functions, their tasks and their employment level.

The members of the Integrity Commissioner's personnel are appointed in accordance with the Public Service Act (chapter F-3.1.1).

DIVISION II

FUNCTIONS AND POWERS

31. The Integrity Commissioner is responsible for the administration of this Act.

32. The Integrity Commissioner makes regulations for the carrying out of this Act.

Such regulations come into force on the date they are approved by the Office of the National Assembly, and are published in the *Gazette officielle du Québec*.

33. The Integrity Commissioner's functions include

(1) providing information and advice regarding disclosures made under this Act and investigations conducted by the Integrity Commissioner;

(2) receiving, recording and examining disclosures to determine whether there are sufficient grounds for taking further action;

(3) conducting investigations into disclosures made under this Act and, if applicable, appointing persons to conduct the investigations on the Integrity Commissioner's behalf;

(4) ensuring that the right to procedural fairness and natural justice of the persons involved as a result of an investigation, including the person making the disclosure, witnesses and the alleged perpetrator of the wrongdoing, is respected;

(5) protecting persons who have made a disclosure under this Act;

(6) subject to any other applicable law, as far as possible and in accordance with the rules of law in force, protecting the identity of persons involved as a result of a disclosure or an investigation, including the person making the disclosure, witnesses or the alleged perpetrator of the wrongdoing;

(7) establishing procedures for processing disclosures and ensuring the confidentiality of information collected in relation to disclosures and investigations;

(8) examining the results of investigations into disclosures and reporting his or her findings to the persons who made the disclosures and to the appropriate chief executive officers, supervisors or boards of directors; and

(9) making recommendations to the appropriate chief executive officers, supervisors or boards of directors concerning the corrective measures to take.

The Integrity Commissioner may delegate any of the functions set out in this section or any other function provided for in this Act and determine the manner of delegation.

34. An act, document or writing is binding on or may be attributed to the Integrity Commissioner only if it is signed by the Integrity Commissioner or, to the extent provided in the delegation of signature instrument, by a member of the Integrity Commissioner's personnel. The delegation instrument is published in the *Gazette officielle du Québec* but takes effect as soon as it is signed by the Integrity Commissioner.

In any civil or penal proceeding, a document purporting to be signed by the Integrity Commissioner is proof of its content and of the capacity of the signatory, in the absence of proof to the contrary.

35. Subject to the applicable legislative provisions, the Integrity Commissioner may enter into an agreement with a government other than the Gouvernement du Québec, with a department of such a government, with an international organization, or with a body of such a government or organization.

36. The Integrity Commissioner defines the duties and responsibilities of the personnel of the Integrity Commissioner and directs their work.

37. Despite the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector or other communication restrictions under other laws of Québec, persons must provide any information or document in their possession required, in keeping with constitutional requirements regarding privacy, by the Integrity Commissioner in exercising the functions of office.

38. In exercising their functions, the Integrity Commissioner and the Integrity Commissioner's personnel may, in keeping with constitutional requirements regarding privacy, exchange information, despite the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector or other communication restrictions under other laws of Québec.

39. This Act does not prevent persons from making disclosures to the Anti-Corruption Commissioner in accordance with the Anti-Corruption Act (chapter L-6.1).

40. The Integrity Commissioner and the Anti-Corruption Commissioner may exchange information, despite the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector or other communication restrictions under other laws of Québec.

41. The Integrity Commissioner sends the Autorité des marchés financiers any information that may be relevant to its mandate under Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1).

DIVISION III

IMMUNITY

42. No proceedings may be brought against the Integrity Commissioner or the Integrity Commissioner's employees for any act or omission in good faith in the exercise of their functions.

The Integrity Commissioner and persons specially authorized by the Integrity Commissioner to conduct investigations have, for that purpose, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

43. Neither the Integrity Commissioner nor persons authorized by the Integrity Commissioner to conduct investigations may be compelled to give testimony concerning information obtained in the exercise of their functions or to produce documents containing such information.

44. Except on a question of jurisdiction, no recourse under article 33 of the Code of Civil Procedure (chapter C-25) or extraordinary recourse within the meaning of that Code may be exercised or any injunction granted against the Integrity Commissioner or persons authorized by the Integrity Commissioner to conduct investigations.

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

DIVISION IV

FINANCIAL AND ADMINISTRATIVE PROVISIONS

45. Each year, the Integrity Commissioner prepares budget estimates and submits them before 1 April to the Office of the National Assembly, which approves them with or without modification.

46. If in the course of a fiscal year the Integrity Commissioner expects to exceed the budget estimates approved by the Office of the National Assembly, the Integrity Commissioner prepares supplementary budget estimates and submits them to the Office of the National Assembly, which approves them with or without modification.

47. Chapter III, Chapter IV, except section 44, the second and fourth paragraphs of section 45, sections 46 and 53 and the third paragraph of section 57, and section 73 of the Public Administration Act (chapter A-6.01) apply to the Integrity Commissioner.

However, the Office of the National Assembly may, by regulation, depart from this Act provided it specifies the provisions departed from and the provisions that apply instead.

48. The provisions of the Financial Administration Act (chapter A-6.001) applicable to budget-funded bodies, except those of sections 30 and 31, apply to the management of the financial resources of the Integrity Commissioner.

49. The sums required for the purposes of this Act and for the exercise of any other function conferred on the Integrity Commissioner by law are those voted by an Act of the Parliament of Québec.

50. No later than 30 September each year, the Integrity Commissioner submits an activity report and financial statements for the preceding fiscal year to the President of the National Assembly.

The President of the National Assembly tables the report and financial statements in the National Assembly within 15 days or, if the Assembly is not sitting, within 15 days of resumption.

51. The Integrity Commissioner may, at any time of the year, prepare a special report on any matter under the Integrity Commissioner's jurisdiction, if the urgency or importance of the matter so warrants.

CHAPTER V

PENAL PROVISIONS

52. No one may, in disclosing a wrongdoing or in the course of an investigation under this Act, knowingly make a false or misleading statement, either orally or in writing, to the Integrity Commissioner or a person acting on behalf or under the authority of the Integrity Commissioner.

53. No one may deliberately hinder the Integrity Commissioner, or a person acting on behalf or under the authority of the Integrity Commissioner, in the exercise of their powers and functions under this Act.

54. No one who knows that a document or thing is likely to be relevant to an investigation conducted under this Act may

(1) destroy, mutilate or alter the document or thing;

(2) falsify the document or make a false document;

(3) conceal the document or thing; or

(4) direct, counsel or cause a person to commit an act mentioned in any of paragraphs 1 to 3, or induce a person, in any manner whatever, to do anything mentioned in any of those paragraphs.

55. Anyone who contravenes section 19 or sections 52 to 54 is guilty of an offence and is liable to a fine of

- (1) \$2,000 to \$20,000 in the case of a natural person; and
- (2) \$10,000 to \$250,000 in the case of a legal person.

For any subsequent offence, the amounts are doubled.

56. Anyone, including a director or officer of a legal person or of an employer, who, by an act or omission, helps a person commit an offence under section 55 or who, by encouragement, advice, consent, authorization or order, induces a person to commit an offence is guilty of that same offence.

CHAPTER VI AMENDING PROVISIONS

ANTI-CORRUPTION ACT

57. The Anti-Corruption Act (chapter L-6.1) is amended by inserting the following sections after section 30:

“30.1. The Commissioner may forward any disclosure made under this Act to the Integrity Commissioner if the Commissioner is of the opinion that it falls more appropriately under the Integrity Commissioner’s authority.

“30.2. If of the opinion that a wrongdoing within the meaning of the Whistleblower Protection Act (*insert the year and chapter number of that Act*) may have been committed, the Commissioner must immediately disclose this information to the Integrity Commissioner, unless the wrongdoing falls under the Commissioner’s authority under this Act.”

ACT RESPECTING LABOUR STANDARDS

58. Section 3.1 of the Act respecting labour standards (chapter N-1.1) is amended by replacing the second paragraph by the following paragraph:

“Subparagraphs 7, 10 and 11 of the first paragraph of section 122 and, where they relate to a recourse under those subparagraphs, the other sections of Division II of Chapter V also apply to all employees and to all employers.”

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

“(11) on the ground of a disclosure or communication by an employee of a wrongdoing within the meaning of the Whistleblower Protection Act (*insert the year and chapter number of that Act*) or the employee’s cooperation in an investigation regarding such a wrongdoing.”

60. Section 140 of the Act is amended by replacing “except subparagraphs 7 and 10” in paragraph 6 by “except subparagraphs 7, 10 and 11”.

CHAPTER VII
FINAL PROVISION

61. This Act comes into force on (*insert the date of assent to this Act*).

SCHEDULE
(Section 28)

OATH OF OFFICE

I, (*name*), declare under oath that I will fulfill my duties as Integrity Commissioner with honesty and justice.

I further declare under oath that I will not reveal or disclose, unless duly authorized, anything that may come to my knowledge in or in connection with the discharge of my duties.

