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# NATIONAL ASSEMBLY

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FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 87

## An Act to facilitate the disclosure of wrongdoings within public bodies

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### Introduction

**Introduced by**  
**Mr. Martin Coiteux**  
**Minister responsible for Government Administration**  
**and Ongoing Program Review**  
**and Chair of the Conseil du trésor**

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## **EXPLANATORY NOTES**

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

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

*The bill provides that any person may make a disclosure to the Public Protector, who may then conduct an investigation and make any recommendations considered appropriate in a report to the highest ranking administrative official within the public body concerned.*

*The bill 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 to facilitate 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.*

*The bill further provides that a person may, under certain conditions, disclose to the public any information the person considers necessary if the person has reasonable cause 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.*

*Reprisals are prohibited against any person who makes a disclosure or cooperates with an audit or an investigation conducted following a disclosure. Penal provisions are enacted in that regard. Moreover, the Act respecting labour standards is amended to protect the rights of employees involved in a disclosure made in accordance with the bill.*

*Lastly, the bill requires that a report on the implementation of the new Act be tabled in the National Assembly.*

**LEGISLATION AMENDED BY THIS BILL:**

- Tax Administration Act (chapter A-6.002);
- Act respecting labour standards (chapter N-1.1);
- Public Protector Act (chapter P-32).



# **Bill 87**

## **AN ACT TO FACILITATE THE DISCLOSURE OF WRONGDOINGS WITHIN 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 of wrongdoings committed or about to be committed within public bodies and to establish a 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 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) any other entity designated by the Government.

**3.** 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 assets belonging to a public body, including the funds or assets it manages or holds for third parties,

(4) gross mismanagement within a public body,

(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.

**4.** 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.

## **CHAPTER II**

### **DISCLOSURE OF WRONGDOINGS**

**5.** Any person may contact the Public Protector to disclose information that could show that a wrongdoing has been committed or is about to be committed within a public body.

An employee of a public body may, if he or she prefers, contact the officer designated within that body to deal with disclosures to disclose information that could show that a wrongdoing has been committed or is about to be committed within that body.

**6.** If a person has reasonable cause 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 5, 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 under Chapter VI.

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.

**7.** A person making a disclosure or cooperating in an audit or an 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, this Act does not authorize a person to communicate information that is protected by professional secrecy between a lawyer or a notary and a client.

**8.** Any person may contact the Public Protector to obtain information about the possibility of making a disclosure in accordance with this Act or advice on the procedure for making a disclosure.

### CHAPTER III

#### DISCLOSURES TO AND INVESTIGATIONS BY THE PUBLIC PROTECTOR

**9.** A disclosure of wrongdoing is made to the Public Protector in accordance with the procedure the latter determines. The procedure must, among other things,

(1) provide for a written acknowledgment of receipt of the disclosed information to be sent, when possible, to the person who made the disclosure;

(2) specify the manner in which a disclosure is to be filed and diligently dealt with;

(3) subject to section 13, include measures to ensure that the identity of the person who makes a disclosure or who cooperates in an audit or investigation conducted on the basis of a disclosure remains confidential;

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

(5) indicate what remedy is available under the law in the case of reprisals within the meaning of sections 26 and 27 as well as the time within which such remedy may be exercised.

The Public Protector sees to it that the procedure is made known.

**10.** On receipt of a disclosure, the Public Protector verifies whether a wrongdoing has been committed or is about to be committed.

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.

**11.** 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;

(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; or

(4) that the disclosure is frivolous.

**12.** 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.

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.

**13.** If the Public Protector considers that disclosed information might be useful to an investigation concerning an alleged offence under an Act, the Public Protector sends the information to a police force as soon as possible. However, if the information may potentially be disclosed under section 26 of the Anti-Corruption Act (chapter L-6.1), the Public Protector sends the information to the Anti-Corruption Commissioner.

At the request of the person to whom the information was sent, the Public Protector puts an end to the processing of the disclosure or continues it in accordance with the agreed terms.

**14.** 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.

**15.** 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 may inform the minister responsible for that body in writing. If the Public Protector sees fit, the Public Protector may subsequently inform the Government in writing or outline the case in a special report or in the Public Protector's annual report to the National Assembly.

**16.** 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 was ended under section 11;
- (3) the number of undertaken, ongoing or concluded investigations; and
- (4) the number of well-founded disclosures.

## **CHAPTER IV**

### **DISCLOSURES WITHIN A PUBLIC BODY**

**17.** A procedure to facilitate employee disclosures of wrongdoings is established and made known within each public body 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”).

**18.** The Public Protector may exempt the highest ranking administrative official of a public body from the obligations set out in section 17, in particular by reason of the body's size or available resources. If so exempted, the highest ranking administrative official must inform the employees that they may contact the Public Protector to disclose a wrongdoing.

**19.** The wrongdoing disclosure procedure provided for in section 17 must, among other things, include the elements set out in the first paragraph of section 9, 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.

**20.** 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 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.

**21.** 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;

(3) puts an end to the processing or examination of the disclosure in any of the cases set out in section 11.

**22.** If the designated officer considers that disclosed information might be useful to an investigation concerning an alleged offence under an Act, he or she sends the information to a police force as soon as possible. However, if the information may potentially be disclosed under section 26 of the Anti-Corruption Act, the designated officer sends the information to the Anti-Corruption Commissioner.

At the request of the person to whom the information was sent, the designated officer puts an end to the processing of the disclosure or continues it in accordance with the agreed terms.

**23.** 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.

## **CHAPTER V**

### **POWERS AND IMMUNITY**

**24.** 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.

**25.** Sections 24, 25, 30 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 VI**

### **PROTECTION AGAINST REPRISALS**

**26.** It is forbidden to take a reprisal against a person on the ground that the person has made a disclosure or cooperated in an audit or an 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.

**27.** The demotion, suspension, dismissal or transfer of a person described in section 26 or any other disciplinary measure or measure that adversely affects such a person's employment or conditions of employment is presumed to be a reprisal within the meaning of that section.

## **CHAPTER VII**

### **PENAL PROVISIONS**

**28.** Anyone who contravenes section 26 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.

**29.** 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 an 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.

**30.** Anyone who, by an act or omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under section 28 or 29 is guilty of an offence and is liable to the same fine as the perpetrator of the offence.

## CHAPTER VIII

### AMENDING PROVISIONS

#### TAX ADMINISTRATION ACT

**31.** 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, either to a person where the communication is necessary for the application or enforcement of a fiscal law or to a police force where the communication is necessary for the application of the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*) or, 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.”

**32.** 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 of information necessary for the application of the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*);”.

**33.** 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 within public bodies (*insert the year and chapter number of that Act*).”

**34.** 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 within public bodies (*insert the year and chapter number of that Act*) obtained under subparagraph *i* of the second paragraph of section 69.1 or the first paragraph of section 69.6 to a police force if the Public Protector considers that it might be useful to an investigation concerning an alleged offence under a law 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).”

**35.** 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 second paragraph of section 5 of the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*) or to a police force or the Anti-Corruption Commissioner in accordance with section 22 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 21 of the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*) or to a police force or the Anti-Corruption Commissioner in accordance with section 22 of that Act.”

#### ACT RESPECTING LABOUR STANDARDS

**36.** 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”.

**37.** 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 disclosed a wrongdoing in accordance with the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*) or that the employee has cooperated in an audit or an investigation regarding such a wrongdoing.”

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

## PUBLIC PROTECTOR ACT

**39.** Section 11 of the Public Protector Act (chapter P-32) is amended by inserting “, the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*)” after “this Act” in the first paragraph.

**40.** Section 13 of the Act is amended by inserting “assigned to the Public Protector under the Act to facilitate the disclosure of wrongdoings within public bodies (*insert the year and chapter number of that Act*), as well as those” after “functions” in the third paragraph.

## CHAPTER IX

### FINAL PROVISIONS

**41.** The Minister must, within five 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 21.

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.

**42.** The Government designates the minister responsible for the administration of this Act.

**43.** The provisions of this Act come into force on the date or dates to be set by the Government.



