



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 107

An Act to increase the jurisdiction and independence of the Anti-Corruption Commissioner and the Bureau des enquêtes indépendantes and expand the power of the Director of Criminal and Penal Prosecutions to grant certain benefits to cooperating witnesses

Introduction

**Introduced by
Mr. Martin Coiteux
Minister of Public Security**

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EXPLANATORY NOTES

This bill amends the Anti-Corruption Act in order to specify that the purpose and scope of that Act and the mission of the Anti-Corruption Commissioner are not limited to corruption in contractual matters, but also concern corruption in the administration of justice and in the granting of rights and privileges, such as an authorization, an appointment or a subsidy.

Changes are made to the procedure for the appointment and dismissal of the Anti-Corruption Commissioner, to provide, among other things, for a non-renewable seven-year term. The bill establishes the office of Associate Commissioner for Investigations and provides that any member of a police force on secondment to the Commissioner may act as an investigator.

The bill provides that the Commissioner, the Associate Commissioners for Audits, the Associate Commissioner for Investigations, the investigators on secondment to the Commissioner and the Commissioner's non-police personnel form a specialized anti-corruption police force. That police force and the audit teams and investigation units designated by the Government form the Unité permanente anticorruption. Further provisions specify the manner in which the Sûreté du Québec and other police forces must cooperate with the Commissioner.

The bill provides that penal proceedings for an offence under a provision of the Anti-Corruption Act are prescribed three years from the date on which the prosecutor becomes aware of the commission of the offence. However, no proceedings may be instituted if more than seven years have elapsed from the date of the commission of the offence.

The Police Act is amended to provide that the director of a police force must inform the director of the Bureau des enquêtes indépendantes, instead of the Minister of Public Security, if a person, other than an on-duty police officer, dies, sustains a serious injury or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody. In addition, the bill specifies that the director of a police force must notify the Bureau des enquêtes indépendantes of any allegation against a police officer concerning a criminal offence of a sexual nature committed in the performance

of duties. The Bureau is to conduct the investigations relating to such allegations and advise the Minister of Public Security of the progress of the file.

Amendments to the Act respecting the Director of Criminal and Penal Prosecutions grant the Director, in the context of a cooperation agreement with a witness, the power to terminate, with regard to the witness and in relation to facts that are the subject of a statement by the witness, a civil proceeding instituted by a public body, the hearing of a complaint before the disciplinary council of a professional order or a measure taken for the purposes of a fiscal law. In addition, if the witness cooperation agreement is terminated, the public body, the complainant who had brought a complaint before a disciplinary council or the Minister of Revenue, as the case may be, may reinstitute a judicial application, again seize the disciplinary council of a complaint or reinstate a measure taken for the purposes of a fiscal law terminated by the Director of Criminal and Penal Prosecutions.

Lastly, the bill makes a number of consequential amendments.

LEGISLATION AMENDED BY THIS BILL:

- Tax Administration Act (chapter A-6.002);
- Charter of Ville de Montréal (chapter C-11.4);
- Professional Code (chapter C-26);
- Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (chapter C-52.2);
- Act respecting the Director of Criminal and Penal Prosecutions (chapter D-9.1.1);
- Anti-Corruption Act (chapter L-6.1);
- Police Act (chapter P-13.1).

REGULATION AMENDED BY THIS BILL:

- Code of ethics of Québec police officers (chapter P-13.1, r. 1).

Bill 107

AN ACT TO INCREASE THE JURISDICTION AND INDEPENDENCE OF THE ANTI-CORRUPTION COMMISSIONER AND THE BUREAU DES ENQUÊTES INDÉPENDANTES AND EXPAND THE POWER OF THE DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS TO GRANT CERTAIN BENEFITS TO COOPERATING WITNESSES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ANTI-CORRUPTION ACT

1. Section 1 of the Anti-Corruption Act (chapter L-6.1) is amended

(1) by replacing “in contractual matters within the public sector” by “in the public sector, including in contractual matters,”;

(2) by inserting “and public institutions” after “public procurement process”.

2. Section 2 of the Act is amended

(1) by replacing paragraph 1 by the following paragraphs:

“(1) a contravention of a federal or a Québec law or of a regulation made under such a law, if the contravention pertains to corruption, breach of trust, malfeasance, collusion, fraud or influence peddling in, for example, awarding, obtaining or performing contracts granted, in the exercise of their functions, by a body or a person belonging to the public sector, or in the administration of justice or the granting of rights and privileges, such as an authorization, an appointment or a subsidy, by a body or a person belonging to the public sector;

“(1.1) a contravention of any of sections 21.12 to 21.14 and 27.5 to 27.11 of the Act respecting contracting by public bodies (chapter C-65.1);”;

(2) by inserting “, 1.1” after “paragraph 1” in paragraph 3.

3. The heading of Division I of Chapter II of the Act is replaced by the following heading:

“ESTABLISHMENT, MISSION AND ORGANIZATION”.

4. Section 4 of the Act is amended by replacing “in contractual matters within the public sector” in the second paragraph by “in the public sector, including in contractual matters”.

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

“5. On the recommendation of the Minister, the Government appoints the Commissioner from among the persons declared qualified to hold the office by the selection committee formed for that purpose.

“5.1. During the year that precedes the end of the Commissioner’s term or as soon as the office becomes vacant, the Minister publishes a notice inviting interested persons to apply for the office of Commissioner or to propose the name of a person they consider qualified to hold that office, in accordance with the procedure the Minister determines.

The Minister also forms the selection committee. The committee is made up of the Deputy Minister of Public Security, the secretary of the Conseil du trésor, an advocate recommended by the Bâtonnier of the Province of Québec, a director of a police force recommended by the board of directors of the Association des directeurs de police du Québec, and a person recommended by bodies representing the municipal sector.

The committee promptly evaluates the candidates’ aptitude on the basis of their knowledge, particularly in criminal and penal law, their experience and their qualifications, according to the criteria determined by government regulation. Without delay, the committee presents to the Minister a report in which it lists the candidates it has met whom it considers qualified to hold the office of Commissioner. All information and documents regarding the candidates and the proceedings of the committee are confidential.

The members of the committee receive no remuneration, except in the cases and on the conditions that may be determined by the Government. They are, however, entitled to the reimbursement of expenses to the extent determined by the Government.

“5.2. The Commissioner is appointed for a non-renewable seven-year term.

At the expiry of the term, the Commissioner remains in office until replaced. The Commissioner may resign at any time by giving written notice to the Minister.

“5.3. The Commissioner must meet the requirements set out in the first paragraph of section 115 of the Police Act (chapter P-13.1), with the exception of subparagraph 4.

“5.4. The Commissioner may not be dismissed or suspended without remuneration by the Government except for cause, on the recommendation of the Minister after the latter receives a report from the Commission de la fonction publique. The suspension may not exceed three months.

In an urgent situation requiring prompt intervention, or in a presumed case of serious fault, the Minister may provisionally relieve the Commissioner from duties, with remuneration.

“5.5. The Government determines the remuneration, employee benefits and other conditions of employment of the Commissioner on the recommendation of the Minister; the Commissioner’s remuneration, once set, may not be reduced.

“5.6. The Commissioner’s functions must be exercised on a full-time basis.

The Commissioner may not engage in any partisan political activity.”

6. Section 7 of the Act is amended by striking out the second sentence of the first paragraph.

7. Section 8 of the Act is replaced by the following sections:

“8. The Government appoints Associate Commissioners for Audits, on the recommendation of the Minister, from among the persons declared qualified to hold the office by a selection committee formed by the Minister and made up of the Commissioner, the Deputy Minister of Public Security and a chartered professional accountant recommended by the Ordre des comptables professionnels agréés du Québec.

The Associate Commissioners for Audits may not be peace officers.

They must take the oath set out in Schedule II before a judge of the Court of Québec.

“8.1. The Government also appoints an Associate Commissioner for Investigations, on the recommendation of the Minister, from among the persons declared qualified to hold the office by a selection committee formed by the Minister and made up of the Commissioner, the Deputy Minister of Public Security and a director of a police force recommended by the board of directors of the Association des directeurs de police du Québec.

The Associate Commissioner for Investigations is a peace officer throughout Québec.

The Associate Commissioner for Investigations must take the oath set out in Schedule I before a judge of the Court of Québec.

“8.2. Associate Commissioners are appointed for a fixed term that may not exceed five years.

At the expiry of their term, Associate Commissioners remain in office until reappointed or replaced. Associate Commissioners may resign at any time by giving written notice to the Commissioner.

“8.3. Associate Commissioners exercise the functions conferred on them under this Act, with the independence provided for in this Act.

Section 5.1, except the second paragraph, and sections 5.3 to 6 apply, with the necessary modifications, in the case of Associate Commissioners.

“8.4. The following persons form a specialized anti-corruption police force:

(1) as members of the police force:

(a) the Commissioner;

(b) the Associate Commissioner for Investigations; and

(c) the investigators on secondment from a police force in accordance with section 14;

(2) the Associate Commissioners for Audits; and

(3) the non-police personnel whose services are required to accomplish the mission of the Commissioner.

“8.5. The Government may designate teams or units of persons doing audit or investigation work in departments or bodies to take part in the fight against corruption under the coordination of the Associate Commissioners for Audits or the Associate Commissioner for Investigations, as the case may be.

“8.6. The police force formed under section 8.4 and the teams or units designated by the Government form the Unité permanente anticorruption.

“8.7. The policing, investigation and support services of the Sûreté du Québec must be made available to the Commissioner when the latter so requires. To that end, the Director General of the Sûreté du Québec and any Sûreté du Québec member or employee must cooperate with the Commissioner.

Such services are provided in accordance with the terms and conditions set out in an agreement between the Commissioner and the Minister or a person designated by the Minister.

“8.8. A police force must inform the Commissioner whenever it has reasonable cause to believe, during the course of an investigation, that a wrongdoing has been committed.

The Commissioner determines, in cooperation with the police force, how the investigation is to continue.”

8. Section 9 of the Act is amended by replacing subparagraph 2 of the first paragraph by the following subparagraph:

“(2) to act as director of the police force formed under section 8.4;”.

9. Section 10 of the Act is amended by inserting “for Audits” after “Associate Commissioners” in the introductory clause.

10. The Act is amended by inserting the following section after section 10:

“**10.1.** The Associate Commissioner for Investigations has the following functions:

(1) to direct the activities of the investigators on secondment from a police force in accordance with section 14 and coordinate the activities of any investigation unit designated by the Government; and

(2) to ensure that the investigation units carry out their mandates in their respective fields of competence.”

11. Section 12 of the Act is amended

(1) by replacing “Members of the Commissioner’s personnel are appointed” in the first paragraph by “The Commissioner’s non-police personnel are appointed”;

(2) by replacing “a member of the personnel” in the second paragraph by “non-police personnel”.

12. Section 13 of the Act is amended by replacing “of the personnel of the Commissioner” by “of the members of and the other persons who form the police force”.

13. Section 13.1 of the Act is amended

(1) by inserting “for Audits” after both occurrences of “Associate Commissioner” in the introductory clause of the first paragraph;

(2) by inserting “for Audits” after “Associate Commissioner” in the last paragraph.

14. Section 14 of the Act is amended by replacing the first and second paragraphs by the following paragraphs:

“Any member of a police force on secondment to the Commissioner by agreement between the Commissioner and the competent authority in respect of the police force may act as an investigator.

Investigators so seconded are peace officers throughout Québec.”

15. Section 15 of the Act is amended by inserting “for Audits” after all occurrences of “Associate Commissioner” in paragraphs 1, 2 and 3.

16. Section 16 of the Act is amended by replacing all occurrences of “Commissioner” in paragraphs 2 and 3 by “Associate Commissioner for Investigations”.

17. Section 17 of the Act is amended by replacing “The Commissioner, the Commissioner’s personnel, the Associate Commissioners and the audit teams or investigation units designated by the Government” by “Persons acting within the Unité permanente anticorruption”.

18. Section 20 of the Act is amended by replacing “the Commissioner, the Commissioner’s personnel, the Associate Commissioners, members of the audit teams or investigation units designated by the Government” by “a person acting within the Unité permanente anticorruption”.

19. Section 21 of the Act is amended by replacing “the Commissioner, the Commissioner’s personnel, the Associate Commissioners, members of the audit teams or investigation units designated by the Government” in the first paragraph by “a person acting within the Unité permanente anticorruption”.

20. Section 29 of the Act is amended by replacing “or to the investigation units concerned” in the second paragraph by “for Audits or the Associate Commissioner for Investigations”.

21. The Act is amended by inserting the following section after section 35:

“35.1. Penal proceedings for an offence under a provision of this Act are prescribed three years from the date on which the prosecutor became aware of the commission of the offence. However, no proceedings may be instituted if more than seven years have elapsed since the date of the commission of the offence.”

22. Schedule I to this Act is amended

(1) by replacing “(Section 7)” after “SCHEDULE I” by “(Sections 7 and 8.1)”;

(2) by replacing “Anti-Corruption Commissioner” in the first paragraph by “*(Anti-Corruption Commissioner or Associate Commissioner for Investigations, as the case may be)*”.

POLICE ACT

23. Section 48 of the Police Act (chapter P-13.1) is amended by replacing “289.6” in the first paragraph by “89.1”.

24. The Act is amended by inserting the following division after section 89:

“DIVISION III.1

“SPECIALIZED POLICE FORCES

“89.1. For the purposes of the pursuit of its mission, a specialized police force shall have jurisdiction to prevent and repress statutory offences throughout Québec.

“89.2. The Bureau des enquêtes indépendantes established under section 289.5 and the police force formed under section 8.4 of the Anti-Corruption Act (chapter L-6.1) are specialized police forces.”

25. Section 126 of the Act is amended

(1) by striking out “section 14 of the Anti-Corruption Act (chapter L-6.1) and of” in the first paragraph;

(2) by striking out “to the Anti-Corruption Commissioner,” in the third paragraph.

26. Section 143 of the Act is amended by inserting “or the person acting as director of a specialized police force” at the end of subparagraph 1 of the second paragraph.

27. Section 257 of the Act is amended by replacing “the Bureau des enquêtes indépendantes established under section 289.5, on the recommendation of the director of the Bureau” in the third paragraph by “a specialized police force, on the recommendation of the person acting as director of the police force”.

28. Section 286 of the Act is amended by adding the following paragraph at the end:

“However, the obligation provided for in the first paragraph does not apply to the director of a police force in the case of an allegation against a police officer concerning a criminal offence of a sexual nature committed in the performance of duties. In such a case, the director must notify the Bureau des enquêtes indépendantes without delay.”

29. Section 287 of the Act is amended

(1) by replacing “cet” by “ces” in the French text;

(2) by inserting “, the Bureau” after “director of police”.

30. Section 289.1 of the Act is amended by inserting the following paragraph after the first paragraph:

“An investigation must also be conducted if the Bureau des enquêtes indépendantes is notified in accordance with the third paragraph of section 286 of an allegation against a police officer concerning a criminal offence of a sexual nature committed in the performance of duties, unless the director of the Bureau considers the allegation to be frivolous or unfounded, after consulting, if the director finds it necessary, the Director of Criminal and Penal Prosecutions.”

31. Section 289.2 of the Act is amended

- (1) by replacing “Minister” in the first paragraph by “Bureau”;
- (2) by striking out the second paragraph.

32. Section 289.4 of the Act is amended

(1) by replacing “the Bureau is charged with conducting under section 289.2” by “conducted by the Bureau in relation to an occurrence described in the first paragraph of section 289.1”;

(2) by replacing “an occurrence described in section 289.1” by “the occurrence”.

33. Section 289.5 of the Act is amended

- (1) by inserting “specialized” before “police force” in the fourth paragraph;
- (2) by adding the following sentence at the end of the fourth paragraph: “The director of the Bureau acts as director of the police force.”

34. Section 289.6 of the Act is replaced by the following section:

“289.6. The mission of the Bureau is to conduct any investigation in relation to an occurrence or allegation described in section 289.1 or any investigation entrusted to it by the Minister under section 289 or 289.3.”

35. Section 289.23 of the Act is amended by replacing “described in” by “described in the first paragraph of”.

36. Section 312 of the Act is amended by replacing “the Sûreté du Québec or a municipal police force” by “a police force”.

37. Section 354 of the Act is amended

(1) by inserting “, a member of a specialized police force” after “municipal police force” in the first paragraph;

(2) by replacing “, a special constable or a member of the Bureau des enquêtes indépendantes” in the first paragraph by “or a special constable”.

ACT RESPECTING THE DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS

38. The Act respecting the Director of Criminal and Penal Prosecutions (chapter D-9.1.1) is amended by inserting the following chapter after section 24:

“CHAPTER II.1

“POWERS OF THE DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS IN CIVIL, DISCIPLINARY AND FISCAL MATTERS

“24.1. Despite any incompatible provision, if the Director considers that the interests of justice so require as part of a cooperation agreement with a witness in a case referred to the Director, the Director may, in relation to facts that are the subject of a statement by the witness concerning that case or a similar case, terminate

(1) with regard to the witness, any civil proceeding instituted by a public body, before the judgment in first instance is rendered on the merits of the dispute;

(2) the hearing of a complaint against the witness before the disciplinary council of a professional order;

(3) any measure taken in relation to the witness for the purposes of a fiscal law within the meaning of section 1 of the Tax Administration Act (chapter A-6.002) if that measure precedes the issue of an assessment or a determination under such a law or, in the case of an assessment or a determination that has already been issued, if the time limit for objecting to the assessment or determination or for bringing an appeal has not expired or a judgment has not been rendered by the Court of Québec with respect to the assessment or determination.

For the purposes of this chapter, “public body” means a body described in section 4 or 7 of the Act respecting contracting by public bodies (chapter C-65.1) or a municipal body within the meaning of section 5 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).

“24.2. To terminate a civil proceeding, the Director must notify a notice to that effect to the parties and file the notice with the office of the court concerned.

To terminate the hearing of a complaint before a disciplinary council, the Director must notify a notice to that effect to the complainant and the secretary of the disciplinary council.

To terminate a measure taken for the purposes of a fiscal law, the Director must notify a notice to that effect to the Minister of Revenue and, if the cooperating witness has brought an appeal before the Court of Québec, file the notice with the office of that court.

“24.3. If the Director terminates a civil proceeding, the public body and the cooperating witness each bear the legal expenses they have incurred.

“24.4. If the Director terminates the witness cooperation agreement for a reason provided for in the agreement and relating to the testimony of or any statement by the witness, the Director must notify a notice to that effect to the persons notified under section 24.2.

“24.5. Solely on notification of the notice required under section 24.4, the public body, the complainant or the Minister of Revenue, as the case may be, may reinstitute a judicial application, again seize the disciplinary council of a complaint or reinstate a measure taken for the purposes of a fiscal law that was terminated by the Director under section 24.1. In such a case, the applicable prescription period begins to run again from the date of notification of the notice required under section 24.4.”

TAX ADMINISTRATION ACT

39. Section 69.1 of the Tax Administration Act (chapter A-6.002) is amended by inserting “, the Associate Commissioner for Investigations” after “Associate Commissioners for Audits” in subparagraph y of the second paragraph.

40. The Act is amended by inserting the following division after section 94.8:

“DIVISION I.2

“COOPERATION AGREEMENT ENTERED INTO BY THE DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS

“94.9. Where the Minister receives a notice under section 24.2 of the Act respecting the Director of Criminal and Penal Prosecutions (chapter D-9.1.1), the Minister shall take the necessary measures to give effect to it.

The same rule applies where the Minister receives a notice under section 24.4 of the Act respecting the Director of Criminal and Penal Prosecutions and, in the case of an assessment, a determination or an appeal before the Court of

Québec terminated by the Director of Criminal and Penal Prosecutions in accordance with section 24.1 of that Act, the Minister may, within a year after receipt of the notice, issue a new assessment or determination taking into account the elements of the terminated measure.

In the management report required under section 75 of the Act respecting the Agence du revenu du Québec (chapter A-7.003), the Minister shall report on the implementation of the first paragraph during the fiscal year concerned in a manner that will ensure the confidentiality of the information.”

CHARTER OF VILLE DE MONTRÉAL

41. Section 57.1.18 of the Charter of Ville de Montréal (chapter C-11.4) is amended by replacing the first paragraph by the following paragraph:

“If, in the opinion of the inspector general, a wrongdoing within the meaning of paragraph 1 of section 2 of the Anti-Corruption Act (chapter L-6.1) may have been committed, the inspector general must, without delay, make a disclosure to the Anti-Corruption Commissioner.”

PROFESSIONAL CODE

42. The Professional Code (chapter C-26) is amended by inserting the following section after section 139.1:

“**139.2.** A notice of the Director of Criminal and Penal Prosecutions notified to the secretary of a disciplinary council in accordance with the second paragraph of section 24.2 of the Act respecting the Director of Criminal and Penal Prosecutions (chapter D-9.1.1) withdraws the complaint that is the subject of the notice from the disciplinary council.

The secretary of the disciplinary council must, without delay after receiving such a notice, send it to the chair of the disciplinary council or, if the chair has not yet been appointed, to the senior chair.”

ACT RESPECTING THE FORFEITURE, ADMINISTRATION AND APPROPRIATION OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITY

43. Section 25 of the Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (chapter C-52.2) is amended by inserting “or the Anti-Corruption Commissioner” after “Sûreté du Québec” in subparagraph 4 of the first paragraph.

PUBLIC SERVICE ACT

44. Section 115 of the Public Service Act (chapter F-3.1.1) is amended by adding the following subparagraph after subparagraph 3 of the first paragraph:

“(4) report to the Minister of Public Security, after conducting an inquiry, on whether there is sufficient cause to dismiss or suspend without remuneration the Anti-Corruption Commissioner or an Associate Commissioner as provided for in sections 5.4 and 8.3 of the Anti-Corruption Act (chapter L-6.1).”

CODE OF ETHICS OF QUÉBEC POLICE OFFICERS

45. Section 1 of the Code of ethics of Québec police officers (chapter P-13.1, r. 1) is amended by replacing “the Anti-Corruption Commissioner, every peace officer within the meaning of section 14 of the Anti-Corruption Act (chapter L-6.1) and” in the second paragraph by “every peace officer within the meaning”.

TRANSITIONAL AND FINAL PROVISIONS

46. Despite the first paragraph of section 5.2 of the Anti-Corruption Act (chapter L-6.1), enacted by section 5, the term of the Anti-Corruption Commissioner in office on (*insert the date of assent to this Act*) continues on the conditions and for the time determined in the Commissioner’s instrument of appointment.

47. This Act comes into force on (*insert the date of assent to this Act*), except sections 28 to 32, 34 and 35, which come into force on the dates to be set by the Government.