



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 183

**An Act mainly to strengthen the role and
independence of the Student
Ombudsman**

Introduction

**Introduced by
Mr. Sébastien Proulx
Minister of Education, Recreation and Sports**

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EXPLANATORY NOTES

The main purpose of this bill is to improve the handling of complaints filed by a student, a homeschooled child or the parents of either with regard to the services a school board provides to them.

To that end, various amendments are made to the Education Act. First, the role and independence of the person acting as Student Ombudsman within every school board is strengthened. More particularly, the bill provides that the Student Ombudsman is appointed by the Minister. Also, the complaints of a student or homeschooled child or the parents of either with regard to the services the school board provides to them are to be filed with the Student Ombudsman. The bill allows the Student Ombudsman to intervene on his own initiative in certain cases and to give his opinion on any matter submitted by the council of commissioners or certain committees referred to in the Act.

Under the bill, the Student Ombudsman is also given certain duties and powers, including the duty to see that the Student Ombudsman's independence is preserved and the power to agree on a mediation process with the persons concerned by the complaint. The bill also determines certain procedures applicable to the handling of complaints, particularly as regards the time limits for examining and following up on complaints and the communication of conclusions and recommendations that include grounds.

The bill allows the Public Protector, after a request by a dissatisfied complainant, to examine a complaint filed with the Student Ombudsman. The Public Protector may also, at the request of a student, a child or the parents of either, examine the merits of a decision made by the council of commissioners after a request for reconsideration. In addition, the Public Protector is given the power to intervene on his own initiative to make recommendations relating to services provided by school boards as a whole.

The bill provides that every school board must establish an oversight and service quality committee to be responsible for ensuring the follow-up of the implementation of recommendations of the Student Ombudsman and the Public Protector. The Minister is given the power to order a school board to act on certain recommendations of the Public Protector.

The bill also amends the Act respecting private education to require private educational institutions to adopt an examination procedure for complaints filed by students or their parents and to allow the Minister to make any recommendation relating to such complaints.

Lastly, consequential amendments are made and transitional measures are set out.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting private education (chapter E-9.1);
- Education Act (chapter I-13.3);
- Public Protector Act (chapter P-32).

REGULATIONS AMENDED BY THIS BILL:

- Regulation respecting the application of the Act respecting private education (chapter E-9.1, r. 1);
- Regulation respecting the complaint examination procedure established by a school board (chapter I-13.3, r. 7.1).

Bill 183

AN ACT MAINLY TO STRENGTHEN THE ROLE AND INDEPENDENCE OF THE STUDENT OMBUDSMAN

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

EDUCATION ACT

1. Section 9 of the Education Act (chapter I-13.3) is amended

(1) by replacing “parents of a student” by “child” and by inserting “, or parents of such a student or child” after “school board”;

(2) by adding the following paragraph at the end:

“The first paragraph does not apply to a decision that was the subject of a complaint for which the Student Ombudsman has undertaken or completed an examination.”

2. Section 10 of the Act is amended

(1) by replacing “of the student or his parents” in the first paragraph by “for reconsideration”;

(2) by replacing “parent of a student” in the second paragraph by “child or parents of a student or child”.

3. Section 11 of the Act is amended by adding the following sentence at the end of the second paragraph: “The Student Ombudsman may not be designated by the council or be on such a committee.”

4. Section 13 of the Act is amended, in paragraph 2,

(1) by inserting “or child” at the end;

(2) by replacing “custody *de facto*” by “de facto custody”.

5. Section 96.14 of the Act is amended by replacing “recourse to the school board’s complaint examination procedure provided for in section 220.2 is an option if the parent or student is not satisfied” in the first paragraph by “the student or parents may request a reconsideration of the decision under section 9 or file a complaint with the Student Ombudsman if not satisfied”.

6. Section 187.1 of the Act is amended by replacing “relating” in the second paragraph by “, complaints filed under section 301.16 and decisions made following such requests or complaints with regard”.

7. The Act is amended by inserting the following section after section 193.5:

“193.6. Every school board must establish an oversight and service quality committee to be responsible mainly for ensuring the follow-up, with the council of commissioners, of the implementation of any recommendation of the Student Ombudsman and the Public Protector that the council has agreed to act on.

The committee is also to be responsible for ensuring the follow-up, with the Minister, of any order made by the Minister under section 459.5.4.

No commissioner may be a member of the committee.”

8. Section 196 of the Act is amended by replacing “and to members of the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities” in the second paragraph by “, to members of the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities and to members of the oversight and service quality committee”.

9. Section 220 of the Act, amended by section 39 of chapter 26 of the statutes of 2016, is again amended by inserting the following paragraph after the second paragraph:

“The school board shall also state, in the report, the number, nature of and the grounds for requests for reconsideration made under section 9, the decisions the council of commissioners overturned entirely or in part and the decisions made by the council of commissioners that gave rise to a request to the Public Protector under the second paragraph of section 301.23.”

10. Section 220.1 of the Act is amended

(1) by replacing “The meeting” in the first paragraph by “Such a meeting”;

(2) by replacing “of the meeting” in the second paragraph by “of such a meeting”;

(3) by replacing the third paragraph by the following paragraph:

“During any such meeting, the commissioners must present the content of the annual report provided for in section 220 to the public, subject to the content of the Student Ombudsman’s annual activity report which he must present. The commissioners and the Student Ombudsman must answer any questions concerning their respective reports.”

11. Section 220.2 of the Act is replaced by the following section:

“220.2. Every school board shall establish, by by-law, a procedure for the examination of complaints related to its functions.

The procedure does not apply to complaints filed by a student, a homeschooled child or the parents of either with regard to the services the school board provides to them. Those complaints are subject to Division VI.1.”

12. The Act is amended by inserting the following division after section 301:

“DIVISION VI.1

“COMPLAINTS AND MEASURES TO PROTECT THE RIGHTS OF STUDENTS, HOMESCHOOLED CHILDREN AND THE PARENTS OF THOSE STUDENTS AND CHILDREN

“§1. — *General provisions relating to the Student Ombudsman*

“301.1. A Student Ombudsman is appointed by the Minister for every school board.

The Student Ombudsman is chosen from a list of at least three names provided to the Minister by the selection committee established for that purpose by every school board and composed of the following persons:

- (1) two parents designated by the parents’ committee;
- (2) one parent of a handicapped student or a student with a social maladjustment or a learning disability designated by the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities;
- (3) one teacher designated by the association that represents the teachers in their dealings with the school board;
- (4) one school principal designated by the director general; and
- (5) one school board representative designated by the director general.

The Minister may submit to the selection committee the name of one or several persons whose qualification for appointment as Student Ombudsman the Minister wishes the committee to examine.

The same person may be appointed as Student Ombudsman for several school boards. A commissioner or a member of the personnel of the school board may not be appointed as Student Ombudsman.

If the selection committee fails to propose a list in accordance with the second paragraph, the Minister may appoint the Student Ombudsman without further formality.

The selection committee members shall receive no remuneration except in such cases, on such conditions and to such extent as the Minister may determine by regulation. They are, however, entitled to the reimbursement of expenses incurred in the exercise of their functions on the conditions and to the extent the Minister may determine by regulation.

“301.2. The Minister may, if the Minister considers it necessary, appoint one or more Deputy Student Ombudsmen for a school board.

A Deputy Student Ombudsman shall exercise the functions the Student Ombudsman delegates to him and act under the authority of the Student Ombudsman. In the exercise of his functions, the Deputy Student Ombudsman is vested with the same powers and immunity as the Student Ombudsman.

Sections 301.1, 301.3 and 301.5 apply to the Deputy Student Ombudsman, with the necessary modifications.

“301.3. The Student Ombudsman is appointed for a term of three years. At the expiry of his term, the Student Ombudsman remains in office until reappointed or replaced.

The same person may not be appointed as Student Ombudsman more than three times for a consecutive or non-consecutive term.

“301.4. Where the Student Ombudsman is absent or unable to act or if the office of Student Ombudsman is vacant, the Deputy Student Ombudsman or, if there are more than one, the Deputy Student Ombudsman designated by the Deputy Student Ombudsmen shall exercise the Student Ombudsman’s functions and powers. Failing that, the Minister may designate one of the Deputy Student Ombudsmen or any other person to exercise those functions and powers temporarily, on the conditions the Minister determines.

“301.5. The Student Ombudsman is remunerated by the school board for which he is appointed, on the conditions and to the extent the Minister may determine by regulation. The expenses incurred in the exercise of the Student Ombudsman’s functions are also borne by the school board.

If a person is appointed as Student Ombudsman for several school boards, they may determine if applicable how to share the expenses inherent to the exercise of the Student Ombudsman’s functions.

“301.6. The Student Ombudsman is responsible for ensuring, with full independence, that the rights of students, homeschooled children and the parents of those students and children are respected.

To that end, the main function of the Student Ombudsman is to examine any complaint filed by a student, a homeschooled child or the parents of either with regard to the services the school board provides to them, except in the case of a complaint involving a decision made by the council of commissioners after a request for reconsideration made under section 9.

The Student Ombudsman shall also exercise the following functions:

(1) intervene on his own initiative if he has reasonable grounds to believe that a student or homeschooled child, or a group of students or homeschooled children, has been or may likely be wronged by an act or omission of the school board or of an officer or employee of the school board; and

(2) advise the council of commissioners, the oversight and service quality committee, the parents' committee or the students' committee on any matter they submit to the Student Ombudsman with regard to the services the school board provides to students, homeschooled children and the parents of those students and children.

Nothing in this section prevents a student, a homeschooled child or the parents of either to apply to the person directly concerned by the complaint or to the person's immediate superior in order to settle any dispute between them.

“301.7. The Student Ombudsman shall ensure the promotion of his role and see that the Student Ombudsman's independence is preserved. He shall disseminate information fostering knowledge and understanding of the Student Ombudsman's functions.

In the exercise of his functions, he shall ensure that his communications are clear and accessible.

The Student Ombudsman's contact information is published on the school board's website.

“301.8. The council of commissioners must take appropriate measures to preserve the independence of the Student Ombudsman at all times.

“301.9. If the Student Ombudsman considers that facts he is examining in the exercise of his functions concern a serious fault or derogatory act referred to in the first paragraph of section 26, the Student Ombudsman must

(1) cease to examine the facts relating to the fault or act concerned and notify the complainant;

(2) notify the Minister of the situation, in writing and without delay, stating the facts relating to the fault or act concerned; and

(3) continue to examine the other facts, if any.

The Minister shall ensure the follow-up, with the complainant, of any notice received under subparagraph 2 of the first paragraph, in particular in order to know if the complainant intends to file a complaint under section 26.

“301.10. The Student Ombudsman may require the cooperation of any staff member of the school board whose expertise the Student Ombudsman considers necessary for the exercise of his functions. He may also, with the authorization of the council of commissioners, call on an outside expert.

“301.11. The Student Ombudsman may request any person to provide information or documents necessary for the exercise of the Student Ombudsman’s functions or to attend a meeting convened by the Student Ombudsman.

“301.12. When intervening on his own initiative, the Student Ombudsman must produce an intervention report in which he sets out, in particular, the conclusions and recommendations of individual or collective scope that he considers appropriate and the grounds on which they are made.

The intervention report is sent to the council of commissioners and the oversight and service quality committee.

“301.13. The council of commissioners must, within 30 days of receipt of the Student Ombudsman’s intervention report, inform the oversight and service quality committee and the Student Ombudsman, in writing, of the action it intends to take on any recommendation of the Student Ombudsman and, if applicable, of the grounds for any refusal to act on such a recommendation.

“301.14. When a matter is submitted to him, the Student Ombudsman must produce, within a reasonable time, a written notice in which he sets out in particular the grounds on which it is made.

The notice is sent to the council of commissioners, the oversight and service quality committee and, if applicable, any other committee which submitted the matter.

“§2.—Provisions relating to complaints filed with the Student Ombudsman

“301.15. The Student Ombudsman assists any person who requests it in drawing up a complaint or in taking action to be taken relating to the complaint.

“301.16. Any complaint filed with the Student Ombudsman must indicate the complainant’s name, address and telephone number and the facts on which it is based.

The Student Ombudsman may require the complaint to be filed in writing.

“301.17. The Student Ombudsman shall inform the complainant of the standards applicable to the complaint, including the right to apply to the Public Protector.

If the complaint concerns a decision referred to in section 9, the Student Ombudsman shall also inform the complainant of his right to request a reconsideration of the decision by the council of commissioners.

The Student Ombudsman may require the complainant to present the complaint to the person directly concerned or to the person's immediate superior if the Student Ombudsman is of the opinion that it would lead more effectively to a satisfactory outcome. In such a case, the examination of the complaint is suspended until the complainant informs the Student Ombudsman of the results of the action taken.

“301.18. The Student Ombudsman may, if circumstances permit and the complainant and the other persons concerned consent to it in writing, meet with them to agree on a mediation process, which may be terminated at any time. In such a case, the examination of the complaint is suspended for the duration of the process.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to a document contained in the mediation record.

“301.19. The Student Ombudsman may, upon summary examination, dismiss a complaint if, in the Student Ombudsman's opinion, it is frivolous, vexatious or made in bad faith.

The Student Ombudsman may also refuse or cease to examine a complaint if

(1) the complainant refuses or fails to provide any information or document that the Student Ombudsman considers relevant for a clear understanding of the facts;

(2) the Student Ombudsman has reasonable grounds to believe that his action would clearly serve no purpose; or

(3) the length of time having elapsed between the facts on which the complaint is based and the receipt of the complaint makes it impossible to examine the complaint.

In such cases, the Student Ombudsman shall inform the complainant within five days. The Student Ombudsman must inform the complainant in writing if the complaint was made in writing.

“301.20. The Student Ombudsman must, within 30 days of receipt of the complaint, inform the complainant of his conclusions and the grounds on which they are made and of his recommendations, if any, to the council of commissioners. The Student Ombudsman must inform the complainant in writing if the complaint was made in writing.

The time limit provided for in the first paragraph is extended by the number of days that is equivalent to the period during which the examination of the complaint was suspended, if applicable.

“301.21. The Student Ombudsman shall set out in writing to the council of commissioners any recommendation of individual or collective scope that the Student Ombudsman considers appropriate and the grounds on which it is made within 30 days of receipt of the complaint. In such a case, the Student Ombudsman must also state his conclusions regarding the complaint and the grounds on which they are made.

The time limit provided for in the first paragraph is extended by the number of days that is equivalent to the period during which the examination of the complaint was suspended, if applicable.

“301.22. The council of commissioners must, within 30 days of receipt of any recommendation of the Student Ombudsman, inform the complainant, the oversight and service quality committee and the Student Ombudsman, in writing, of the action it intends to take on such a recommendation of the Student Ombudsman and, if applicable, of the grounds for any refusal to take action on such a recommendation.

“§3. — Provisions relating to the Public Protector

“301.23. A complainant may request that the Public Protector examine the complaint he has filed with the Student Ombudsman if

- (1) the complainant is dissatisfied with the conclusions or recommendations of the Student Ombudsman;
- (2) the complainant is dissatisfied with the action the council of commissioners has taken or intends to take on the Student Ombudsman’s recommendations;
- (3) the Student Ombudsman has failed to comply with section 301.20 or 301.21; or
- (4) the council of commissioners has failed to comply with section 301.22.

Likewise, a student, child or the parents of either may request that the Public Protector examine the merits of a decision made by the council of commissioners following a request for reconsideration made under section 9 in the following cases:

- (1) the student, child or the parents of either are dissatisfied with the decision made by the council of commissioners; or
- (2) the council of commissioners has failed to comply with section 11 or 12.

On receiving a request under the first paragraph, the Public Protector shall notify the Student Ombudsman and the council of commissioners. The Student Ombudsman must, within five days of the notification, send a copy of the entire complaint record to the Public Protector.

On receiving a request under the second paragraph, the Public Protector shall notify the council of commissioners. The council of commissioners must, within five days of the notification, send a copy of the entire decision record to the Public Protector.

“301.24. The Public Protector may, upon summary examination, dismiss a request if, in the Public Protector’s opinion, it is frivolous, vexatious or made in bad faith.

The Public Protector may also refuse or cease to examine a request if

(1) the person who made the request refuses or fails to provide any information or document that the Public Protector requires;

(2) the Public Protector has reasonable grounds to believe that his intervention would clearly serve no purpose;

(3) the length of time having elapsed between the facts on which the request is based and the receipt of the request makes it impossible to examine the request;

(4) more than one year has elapsed since the person who made the request received the Student Ombudsman’s conclusions on the person’s complaint, since the date on which the Student Ombudsman failed to comply with section 301.20 or 301.21 or since the council of commissioners failed to comply with section 301.22, unless the person who made the request establishes to the Public Protector that it was impossible for the person to act; or

(5) more than one year has elapsed since the person who made the request received the council of commissioners’ decision following a request for reconsideration or since the date on which the council of commissioners failed to comply with section 11 or 12, unless the person who made the request establishes to the Public Protector that it was impossible for the person to act.

In such cases, the Public Protector shall inform the person who made the request in writing.

“301.25. The Public Protector shall promptly inform the person who made the request of his conclusions and the grounds on which they are made and, if applicable, of his recommendations to the council of commissioners.

The Public Protector shall also inform the Student Ombudsman, the council of commissioners and, if there are any recommendations made, the Minister.

“301.26. The council of commissioners must, within 30 days of receipt of any recommendation of the Public Protector, inform the person who made the request, the Student Ombudsman, the oversight and service quality committee, the Minister and the Public Protector, in writing, of the action it intends to take on such a recommendation of the Public Protector and, if applicable, the grounds for any refusal to take action on such a recommendation.

“301.27. The Public Protector may intervene on his own initiative whenever he has reasonable grounds to believe that students or homeschooled children have been or may likely be wronged by repeated practices within one or more school boards and that his intervention will lead to recommendations relating to services provided by school boards as a whole.

The Public Protector must produce a report in which he sets out the conclusions and recommendations of systemic scope that the Public Protector considers appropriate and the grounds on which they are made. The intervention report is sent to the Minister.

“301.28. Sections 20, 21, 24, 25, 30 to 33, 34 and 35 of the Public Protector Act (chapter P-32) apply to the Public Protector in the exercise of the functions assigned to him under this Act, with the necessary modifications.

“§4. — Miscellaneous provisions

“301.29. No person shall take reprisals or attempt to take reprisals in any manner against any person

(1) who files or intends to file a complaint with the Student Ombudsman or make a request to the Public Protector under this division; or

(2) who cooperates with the Student Ombudsman or the Public Protector in the exercise of the Student Ombudsman’s or Public Protector’s respective functions.

“301.30. The Student Ombudsman or the Deputy Student Ombudsman may not be prosecuted for an omission or act done in good faith in the exercise of his functions.

No proceedings may be brought against a person who, in good faith, has filed a complaint or made a request under this division or has cooperated with the Student Ombudsman or the Public Protector in the exercise of the Student Ombudsman’s or Public Protector’s respective functions, whatever the conclusions issued.

“301.31. The Student Ombudsman must send an annual activity report to the school board.

The report states, in particular,

(1) the number of complaints received, dismissed upon summary examination, examined, refused or abandoned since the last report, and the nature of and grounds for those complaints;

(2) the time taken for the examination of complaints;

(3) the nature of the main recommendations and the action taken on those recommendations by the council of commissioners within the scope of the examination of a complaint or of an intervention made by the Student Ombudsman on his own initiative;

(4) the number of complaints that gave rise to a request to the Public Protector, and the nature of and grounds for those complaints; and

(5) the number and nature of the matters submitted to the Student Ombudsman for an opinion.

The report must separately list complaint referrals concerning acts of bullying or violence. It may include any recommendation the Student Ombudsman considers appropriate with respect to measures required to prevent and stop bullying and violence.

The Student Ombudsman’s report must bear his signature and be integrated into the school board’s annual report provided for in section 220.”

13. The Act is amended by inserting the following section after section 457.3:

“457.3.1. The Minister may determine by regulation all standards relating to the complaints and protection measures under Division VI.1. The regulation may, in particular, include provisions to

(1) establish the criteria and selection procedure for the appointment of the Student Ombudsman or Deputy Student Ombudsman;

(2) state the grounds for disqualification from exercising the functions of Student Ombudsman or Deputy Student Ombudsman;

(3) determine the rules applicable to the remuneration and the reimbursement of the expenses of the Student Ombudsman, Deputy Student Ombudsman or members of the selection committee described in section 301.1;

(4) determine the Student Ombudsman’s or Deputy Student Ombudsman’s procedure for record keeping; and

(5) specify the composition and mode of operation of the oversight and service quality committee.”

14. The Act is amended by inserting the following sections after section 459.5.3:

“**459.5.4.** The Minister may order a school board to act on a recommendation of the Public Protector within a reasonable time following a request under section 301.23.

“**459.5.5.** The Minister shall prepare a guide for school boards and Student Ombudsmen on good practices for complaints filed by a student, a homeschooled child or the parents of either with regard to the services a school board provides to them, and see that it is disseminated among school boards and Student Ombudsmen.”

ACT RESPECTING PRIVATE EDUCATION

15. The Act respecting private education (chapter E-9.1) is amended by inserting the following section after section 63:

“**63.0.1.** An institution dispensing educational services belonging to the categories listed in paragraphs 1 to 5 of section 1 must adopt an examination procedure for complaints filed by students or their parents with regard to the services the institution dispenses to them.

A student or parent who is dissatisfied with the handling of a complaint by an institution or with the outcome of the examination may apply to the Minister. The Minister may make any recommendation to the institution as regards a complaint brought to the Minister’s attention.

The Minister must assist any student or parent who requests it for any information relating to a complaint. The Minister may take any action with the institution the Minister considers appropriate.”

16. Section 63.8 of the Act is amended by inserting “concerning an act of bullying or violence” after “complaints”.

PUBLIC PROTECTOR ACT

17. Section 13 of the Public Protector Act (chapter P-32) is amended by inserting “and the Education Act (chapter I-13.3)” after “the Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1)” in the third paragraph.

REGULATION RESPECTING THE APPLICATION OF THE ACT RESPECTING PRIVATE EDUCATION

18. The Regulation respecting the application of the Act respecting private education (chapter E-9.1, r. 1) is amended by inserting the following section after section 21:

“**21.1.** In the case of educational services belonging to the categories listed in paragraphs 1 to 5 of section 1 of the Act respecting private education (chapter E-9.1), the contract or registration form shall also contain the examination procedure for complaints referred to in section 63.0.1 of that Act.”

REGULATION RESPECTING THE COMPLAINT EXAMINATION PROCEDURE ESTABLISHED BY A SCHOOL BOARD

19. Section 1 of the Regulation respecting the complaint examination procedure established by a school board (chapter I-13.3, r. 7.1) is amended

- (1) by striking out subparagraphs 6 and 7 of the first paragraph;
- (2) by striking out the second paragraph.

20. Section 2 of the Regulation is amended

- (1) by striking out the first paragraph;
- (2) by replacing “and the contact information of the Student Ombudsman must be broadcast” in the second paragraph by “must be published”.

21. Division II of the Regulation, comprising sections 6 to 10, is repealed.

TRANSITIONAL AND FINAL PROVISIONS

22. Student Ombudsmen in office on the date of coming into force of this Act remain in office on the same terms until they are appointed or replaced in accordance with section 301.1 of the Education Act (chapter I-13.3), enacted by section 12.

23. The examination of complaints in progress on the date of coming into force of this Act is continued in accordance with section 220.2 of the Education Act and the complaint examination procedure established by the school board under that section, as they read before the coming into force of this Act.

24. The first guide on good practices for complaints filed by a student, a homeschooled child or the parents of either with regard to the services a school board provides to them, prepared under section 459.5.5 of the Education Act, enacted by section 14, must be disseminated by the Minister not later than 1 January 2020.

25. This Act comes into force on 1 January 2019.

