



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 393

**An Act to affirm Québec's participation
in the appointment process for Québec
Supreme Court of Canada judges**

Introduction

**Introduced by
Madam Catherine Fournier
Member for Marie-Victorin**

**Québec Official Publisher
2019**

EXPLANATORY NOTES

The purpose of this bill is to affirm Québec's participation in and nominees for the appointment of the three Québec judges on the Supreme Court of Canada.

The bill aims to establish a legal framework to serve as the basis for a constitutional agreement between Québec and the federal government to ensure Québec's participation in the appointment process for the three Québec Supreme Court of Canada judges.

The bill defines the terms and conditions governing the selection procedure for the three candidates proposed by Québec to the federal government for appointment to a Québec seat on the Supreme Court of Canada when such a seat is vacant or about to become vacant.

Under the bill, a selection committee composed of members from different sectors is responsible for assessing candidates' applications and for designating, in a report sent to the Members of the National Assembly, the three candidates considered most qualified to occupy the office of Québec judge on the Supreme Court of Canada.

The candidacies designated by the selection committee are submitted to the National Assembly in a motion by the Premier. Each candidacy must be approved by three-quarters of the Members of the Assembly.

The President of the National Assembly sends a letter to the federal government communicating the names of the three candidates chosen by the Assembly for appointment to a vacant Québec seat on the Supreme Court of Canada.

Bill 393

AN ACT TO AFFIRM QUÉBEC'S PARTICIPATION IN THE APPOINTMENT PROCESS FOR QUÉBEC SUPREME COURT OF CANADA JUDGES

AS Québec constitutes a nation;

AS, when the Supreme Court of Canada was created, representing Québec's social values and legal traditions was critical for maintaining Quebecers' confidence in the Court;

AS, since the creation of the Supreme Court of Canada, guaranteeing a minimum number of judges from Québec on the Court has been central to protecting Québec's interests;

AS, under the current rules, the federal government has the discretionary power to appoint judges to the Supreme Court of Canada;

AS the Supreme Court of Canada plays a key role in our democratic system as the final arbiter of the rights of the people of Québec;

AS it is appropriate that Québec participate in the process for appointing members of the court called on to make final determinations in such matters as jurisdictional disputes between the federal and federated governments;

AS the Meech Lake Accord of 3 June 1987 would, for appointments to each of the three Québec seats on the Supreme Court of Canada, have allowed the Governor in Council to appoint a candidate proposed by the Gouvernement du Québec;

AS, to provide a framework for the federal government's discretionary power to appoint Québec Supreme Court of Canada judges, it is important to establish a candidate review mechanism in which Québec participates by forming a selection committee mandated to draw up a shortlist of potential appointees;

AS it is essential that the candidate selection procedure for the appointment of Québec Supreme Court of Canada judges be transparent and objective and that, consequently, it is appropriate to require that the candidates proposed by Québec be approved by the National Assembly;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PRELIMINARY PROVISIONS

1. This Act establishes the terms and conditions governing the procedure for selecting the three candidates to be proposed to the federal government for the appointment of a Québec Supreme Court of Canada judge when a Québec seat is vacant or about to become vacant.

2. For the purposes of this Act and unless otherwise specified, “judge” means a Québec judge of the Supreme Court of Canada chosen from among the judges of the Court of Appeal or the Superior Court of Québec, or from among advocates with at least 10 years’ standing at the Barreau du Québec (Bar) in accordance with section 6 of the Supreme Court Act (Revised Statutes of Canada, 1985, chapter S-26).

CHAPTER II

SECRETARY FOR THE SELECTION OF CANDIDATES FOR JUDICIAL OFFICE

3. The procedure for selecting the most qualified candidates for appointment as Québec Supreme Court of Canada judge is administered by the Secretary for the Selection of Candidates for Judicial Office (Secretary).

The juriconsult appointed under the Code of ethics and conduct of the Members of the National Assembly (chapter C-23.1) exercises the functions assigned to the Secretary.

4. The Secretary takes the necessary measures to ensure that candidates’ applications and the information contained in candidates’ files remain confidential.

5. The Secretary and the persons assisting the Secretary must take an oath of non-disclosure prescribed by regulation stipulating, in particular, that they may not disclose information obtained in the exercise of their functions.

6. The Secretary attends the meetings of the selection committee formed under section 14 but may not vote.

CHAPTER III

SELECTION PROCEDURE

DIVISION I

OPENING A COMPETITION

7. As soon as a judge dies, resigns, is removed from or otherwise ceases to hold office, the Secretary opens a competition to select the three candidates most qualified to replace the judge.

The Secretary also opens a competition two months before a judge reaches the age of retirement.

8. As soon as the competition is opened, a notice inviting persons interested in submitting their applications is published in the *Journal du Barreau*, on the National Assembly website and in a publication circulated or disseminated throughout Québec.

The notice includes the following:

(1) the eligibility requirements for judicial office and the selection criteria set out in this Act;

(2) the requirement that persons interested submit their application on the form prescribed by regulation and provide the required supporting documents;

(3) the personal information protection measures applicable throughout the selection procedure; and

(4) the application deadline and the address to which the application must be sent.

9. The Secretary sends the notice to

(1) the Chief Judge of the Court of Québec;

(2) the Premier;

(3) the leader of the Official Opposition party;

(4) the leader of any other opposition party;

(5) the Bâtonnier of the Province of Québec;

(6) the President of the *Chambre des notaires du Québec*; and

(7) the deans of the law faculties of Québec's university institutions.

Within 10 days of receiving the notice, the persons referred to in subparagraphs 1 to 6 of the first paragraph must send a letter to the Secretary designating a person to sit on the selection committee and a person designated to act as a substitute, in accordance with section 15.

The persons referred to in subparagraph 7 of the first paragraph must jointly decide on two representatives to designate from the university community who are legal experts. Within 10 days of receiving the notice, they must inform the Secretary of the person designated to sit on the selection committee and the person designated to act as a substitute, in accordance with section 15.

DIVISION II

APPLYING FOR JUDICIAL OFFICE

10. Persons wishing to apply for judicial office must, within two weeks following publication of the notice, send the Secretary a duly completed application form and proof of at least 10 years' standing at the Bar or proof of their appointment as a Court of Appeal or Superior Court of Québec judge.

11. Past applicants for appointment to a Québec seat on the Supreme Court of Canada must reapply when a new competition is opened.

12. When a candidate's file is complete, provided the candidate meets the legal eligibility requirements, the Secretary sends the file to the chair of the selection committee and informs the candidate.

If a candidate's file is received after the application deadline indicated in the notice or if the candidate does not meet the legal eligibility requirements, the Secretary returns the file to the candidate and the candidate is deemed not to have applied.

13. Members of the selection committee formed under section 14 may not, during their term of office and for one year after the selection committee report is filed, apply to be nominated by Québec for the office of Québec judge on the Supreme Court of Canada.

DIVISION III

SELECTION COMMITTEE

14. Following publication of the notice, a selection committee is formed to assess the candidates' applications and report on them.

15. The selection committee is composed of

(1) the Chief Judge of the Court of Québec or a judge designated by the Chief Judge from among the judges of the Court of Québec, who acts as the committee chair;

- (2) a Member from the Government party;
- (3) a Member from the Official Opposition party;
- (4) a Member from any other opposition party;
- (5) a member of the Bar designated by its board of directors;
- (6) a member of the Chambre des notaires du Québec designated by its board of directors; and
- (7) a representative from the university community who is a legal expert, designated by the deans of the law faculties of Québec's university institutions.

Each selection committee member must have a person designated to act as his or her substitute, in accordance with the prescribed designation procedure applicable to the member to be replaced.

16. Selection committee members must take an oath of discretion and non-disclosure prescribed by regulation and stipulating, in particular, that all selection committee discussions and deliberations are confidential and may not be disclosed.

17. A selection committee member must withdraw from the committee if

- (1) the member is or has been a candidate's spouse;
- (2) the member is related to a candidate or connected to a candidate by marriage or civil union up to and including the degree of first cousin;
- (3) the member is or has been a candidate's partner, colleague, employer, immediate superior or employee in the last five years; or
- (4) there is reasonable cause to fear that the member could be biased for any other reason.

For the purposes of subparagraph 4 of the first paragraph, selection committee members must immediately bring to the committee chair's attention any fact of such a nature as to justify reasonable cause to fear bias.

A candidate may bring grounds for disqualifying a member involved in assessing the candidate's application to the selection committee's attention, in which case the committee chair decides whether the member is to remove himself or herself from the assessment of that application.

18. A selection committee member, other than a judge, a Member of the National Assembly or a public service employee, receives a salary determined by regulation of the Government and is entitled, on presentation of vouchers, to the reimbursement of expenses incurred to attend committee meetings.

DIVISION IV

ELIGIBILITY REQUIREMENTS AND SELECTION CRITERIA

19. For a candidate to be eligible, he or she must be

- (1) a Court of Appeal or Superior Court of Québec judge; or
- (2) an advocate with at least 10 years' standing at the Bar.

20. To assess a candidate's application, the selection committee considers the following criteria:

- (1) the candidate's competencies, including
 - (a) personal and intellectual qualities, integrity, knowledge and general experience;
 - (b) extent of knowledge of the law and experience in various areas of the law;
 - (c) civil law experience; and
 - (d) capacity for judgment, insight, level-headedness, ability to set priorities and render a decision within a reasonable time and quality of expression;
- (2) the candidate's motivation for seeking the office;
- (3) the candidate's human, professional, social and community experience;
- (4) the candidate's level of awareness of Québec's social realities, legal traditions and social values; and
- (5) the legal community's recognition of the candidate's qualities and competencies.

DIVISION V

MEETINGS WITH CANDIDATES

21. The selection committee examines the candidates' files and determines with which candidates it will meet.

22. The Secretary informs the candidates selected of the date and place the selection committee will meet with them and informs the other candidates that they have not been selected.

23. The selection committee meets with the candidates in camera.

DIVISION VI

SELECTION COMMITTEE OPERATION

24. The selection committee chair decides all matters concerning the selection committee's operation, work and report.

25. Selection committee meetings are held in the members' presence.

26. Selection committee meetings may not proceed in the absence of a quorum, which is five members.

27. The committee chair prepares the selection committee's meeting agendas in collaboration with the Secretary.

28. Selection committee members must not make comments about candidates outside selection committee meetings.

29. Selection committee members may not discuss candidates' applications with the candidates outside selection committee meetings with those candidates.

30. Selection committee members must show discretion and impartiality throughout the selection committee's work. Their deliberations must focus exclusively on the candidates' aptitudes. A candidate's political ideas or affiliation must not be taken into consideration in the selection committee's assessment.

DIVISION VII

SELECTION COMMITTEE REPORT

31. No later than 30 days after the competition's closing date, the selection committee must produce a report indicating, in alphabetical order, the names of the three candidates it considers most qualified to be appointed to the office of judge.

The report includes any comments the selection committee considers appropriate, in particular concerning the characteristics and special qualifications of the three candidates named in the report, without, however, ranking the candidates.

32. A candidate is designated when the majority of selection committee members are in favour of the proposal.

33. For each of the three candidates considered the most qualified for appointment to judicial office, the Secretary carries out the necessary verifications with disciplinary bodies, professional orders, police authorities and credit agencies.

Should the verifications reveal information considered cause for concern, the Secretary must advise the selection committee members, who may decide to designate a different candidate.

34. The selection committee's designations are valid only for the competition for which the selection committee is formed.

35. The Secretary sends a copy of the selection committee report, in a sealed envelope, to each Member of the National Assembly.

The Members must take the necessary measures to ensure the confidentiality of the report's contents.

CHAPTER IV

PROPOSAL OF CANDIDATES BY THE NATIONAL ASSEMBLY

36. The National Assembly proposes three candidates for appointment to the office of judge within 15 days of receiving the selection committee report or, if the Assembly is not sitting, within three days of resumption.

37. The three candidates that the National Assembly proposes must be those designated in the selection committee report or any other candidate designated by the selection committee in accordance with the procedure provided for in section 38.

A candidate is proposed by the National Assembly on a motion by the Premier and passed by at least three-quarters of the Members.

38. Before presenting the motions, the Premier may, after consulting with the leader of the Official Opposition party, the leaders of the other parliamentary groups and the independent Members, contact the Secretary to ask that the selection committee designate one or more other candidates.

The Secretary takes the measures necessary for the selection committee to meet as soon as possible and to designate the number of candidates requested by the Premier from among those who were not designated in the selection committee report.

39. The name of a candidate designated under section 38, along with the selection committee's comments on the candidate, must be sent to the Members of the National Assembly in accordance with the procedure set out in section 35.

40. The President of the National Assembly sends a letter to the federal government stating the names of the three candidates proposed by Québec for a Québec seat on the Supreme Court of Canada that is vacant or about to become vacant.

CHAPTER V

FINAL PROVISIONS

41. The sums required for the purposes of this Act are those voted pursuant to an Act of the Parliament of Québec.

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

