



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 697

**An Act to promote the disclosure of
wrongdoings and strengthen the
protection of whistleblowers**

Introduction

**Introduced by
Mr. Sylvain Gaudreault
Member for Jonquière**

**Québec Official Publisher
2021**

EXPLANATORY NOTES

This bill amends the Act to facilitate the disclosure of wrongdoings relating to public bodies by expanding its application to other bodies, in particular bodies linked to a public body by a contractual agreement.

The bill gives the Public Protector the responsibility for dealing with disclosures made by third parties or by members of the personnel of the bodies concerned. The person responsible for dealing with disclosures within a body becomes a liaison officer with the Public Protector. The liaison officer's functions include informing and assisting the members of the personnel of bodies on matters relating to the disclosure process. The liaison officer is also responsible for informing the members of the personnel of their rights and obligations regarding the processing of disclosures and for carrying out information and awareness activities on that topic.

The bill strengthens the protection of whistleblowers by stating that their identity is confidential and by specifying that no person may disclose or be compelled to disclose the identity of such a person without their consent.

The bill facilitates the disclosure of wrongdoings by allowing disclosures to be made to the public without first being communicated to a police force or to the Anti-Corruption Commissioner.

Furthermore, the bill provides that the Minister must, not later than 1 January 2023 and subsequently every five years, report to the Government on the implementation of the Act and the advisability of maintaining or amending it.

Lastly, the bill amends the Public Protector Act to establish, within the Public Protector, the Assistance Fund for Persons Who Disclose Wrongdoings. The purpose of this Fund is to ensure the funding of legal costs that a person incurs after disclosing a wrongdoing or cooperating in an audit or investigation conducted within the scope of the disclosure, in particular if reprisals have been taken against the person.

LEGISLATION AMENDED BY THIS BILL:

- Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1);
- Public Protector Act (chapter P-32).

Bill 697

AN ACT TO PROMOTE THE DISCLOSURE OF WRONGDOINGS AND STRENGTHEN THE PROTECTION OF WHISTLEBLOWERS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT TO FACILITATE THE DISCLOSURE OF WRONGDOINGS RELATING TO PUBLIC BODIES

1. The title of the Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1) is amended by striking out “relating to public bodies”.

2. Section 1 of the Act is amended by striking out “in relation to public bodies”.

3. Section 2 of the Act is amended

(1) by replacing “public bodies” in the introductory clause by “concerned”;

(2) by inserting “and, where applicable, their subsidiaries” at the end of paragraph 4;

(3) by inserting “, private seniors’ residences and intermediate resources” after “under agreement” in paragraph 7;

(4) by inserting the following paragraphs after paragraph 9.1:

“(9.2) bodies at least half of whose expenditures are borne directly or indirectly by the Consolidated Revenue Fund or the federal treasury, a government, a municipality, another public authority or another public body;

“(9.3) bodies linked to a public body by a contractual agreement that provides that

i. the bodies are governed by the public body’s administrative rules and rules of ethics; and

ii. the bodies’ financial management is subject to the public body’s control and audit;”.

4. Section 4 of the Act is amended

(1) by replacing “a contravention of a Québec law, of a federal law applicable in Québec or of” in paragraph 1 by “an act or serious omission that contravenes a Québec law, a federal law applicable in Québec or”;

(2) by replacing “public body” in paragraph 3 by “body governed by this Act”;

(3) by replacing “public body” in paragraph 4 by “body governed by this Act”.

5. Section 6 of the Act is amended by replacing the first paragraph by the following paragraph:

“Any person may, at any time, disclose to the Public Protector information that could show that a wrongdoing has been committed or is about to be committed in relation to a body governed by this Act. Such wrongdoings include, in particular, those committed by a member of the personnel of a body governed by this Act in the exercise of his or her functions or by any other person, partnership, group or other entity in the course of the tendering or awarding process for, or the performance of, a contract of a public body, including a grant of financial assistance. A disclosure may be made anonymously or not.”

6. Section 7 of the Act is amended by replacing “However, before doing so, that person must” in the second paragraph by “Before doing so, that person may”.

7. Section 8 of the Act is amended by striking out the third paragraph.

8. The Act is amended by inserting the following section after section 8:

“8.1. The identity of the person making the disclosure is confidential. No person may disclose or be compelled to disclose the identity of the person making the disclosure without his or her consent.”

9. Section 10 of the Act is amended by inserting the following subparagraph after subparagraph 3 of the first paragraph:

“(3.1) specify the functions of the person responsible for dealing with disclosures relating to a body governed by this Act;”.

10. Section 11 of the Act is amended by striking out “public” in the third paragraph.

11. The Act is amended by inserting the following section after section 11:

“11.1. In the course of a disclosure made to the Public Protector, the Public Protector may notify a body governed by this Act of a situation likely to cause serious prejudice to a person or a group of persons.

The Public Protector may also recommend to a body governed by this Act any action he or she considers necessary to prevent a wrongdoing.”

12. Section 13 of the Act is amended by striking out all occurrences of “public”.

13. Section 15 of the Act is amended by striking out all occurrences of “public”.

14. Section 16 of the Act is amended by striking out “public”.

15. Section 18 of the Act is amended by replacing “public body” by “body governed by this Act”.

16. Section 19 of the Act is amended by replacing “public body” by “body governed by this Act”.

17. Section 20 of the Act is amended by striking out “or to the designated officer within the public body” in the first paragraph.

18. Section 21 of the Act is amended by replacing “who made the disclosure” in the first paragraph by “who consulted him or her”.

19. Section 22 of the Act is replaced by the following section:

“22. The functions of the designated officer are, in particular,

(1) to inform and assist the members of the personnel of the bodies governed by this Act on matters relating to the disclosure process;

(2) to forward the processing of the disclosure to the Public Protector or any other competent body;

(3) to inform the members of the personnel of the bodies governed by this Act of their rights and obligations regarding the processing of disclosures and to carry out information and awareness activities on that topic;

(4) to encourage and develop a culture of openness and transparency within the bodies governed by this Act as regards the disclosure of wrongdoings, in particular through mechanisms provided for in their codes of ethics and professional conduct; and

(5) to act as liaison officer within the body in the case of an audit or investigation by the Public Protector or another competent body.”

20. Section 23 of the Act is amended by striking out the second paragraph.

21. Sections 24 and 25 of the Act are repealed.

22. Section 32 of the Act is amended by striking out all occurrences of “public”.

23. Section 33 of the Act is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph:

“(1.1) contravenes section 8.1, or”.

24. Section 54 of the Act is repealed.

25. The Act is amended by inserting the following section after section 54:

“54.1. The Minister must, not later than 1 January 2023 and subsequently every five years, report to the Government on the implementation of this Act and the advisability of maintaining or amending it.

The report is tabled in the National Assembly within the next 30 days or, if the Assembly is not sitting, within 30 days of resumption.

The report is examined by the competent parliamentary committee within 15 days after its tabling in the National Assembly.”

PUBLIC PROTECTOR ACT

26. The Public Protector Act (chapter P-32) is amended by inserting the following division after Division VI:

“DIVISION VI.1

“ASSISTANCE FUND FOR PERSONS WHO DISCLOSE WRONGDOINGS

“29.1. The Assistance Fund for Persons Who Disclose Wrongdoings is established within the Public Protector.

The purpose of the Fund is to ensure the funding of legal costs a person incurs after disclosing a wrongdoing or cooperating in an audit or investigation conducted in the framework of a disclosure, in particular if reprisals have been taken against the person within the meaning of section 30 of the Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1).

The purpose of the Fund is also to promote the dissemination of information relating to recourse in the case of reprisals.

“29.2. The Public Protector may, by regulation subject to the approval of the Government,

(1) determine the form and content of the applications to be filed with the Public Protector;

(2) determine the eligibility requirements and a scale for the financial assistance granted by the Public Protector; and

(3) determine the percentage of financial assistance that may be remitted to a recipient as an advance payment.

“29.3. The following are credited to the Fund:

(1) the Public Protector’s contribution in the amount and according to the terms and conditions determined by the Government after consultation of the Public Protector by the Minister;

(2) the amounts transferred to it by the Chair of the Conseil du trésor out of the appropriations granted for that purpose by Parliament;

(3) the amounts transferred to it by the Minister of Finance under sections 53 and 54 of the Financial Administration Act (chapter A-6.001); and

(4) the gifts, legacies and other contributions paid into the Fund to further the achievement of its purposes.

“29.4. The sums required to pay any expenses related to the purposes referred to in section 29.1 are debited from the Fund.

“29.5. Not later than 30 June each year, the Public Protector must table a report on the Fund’s activities for the preceding fiscal year.

The Public Protector tables the report in the National Assembly if the Assembly is sitting or, if it is not, within 30 days of resumption.

“29.6. The Auditor General must, each year and, in addition, whenever the Government so orders, audit the books and accounts of the Fund.”

MISCELLANEOUS AND FINAL PROVISIONS

27. In any text or document, regardless of its form or medium, a reference to the Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1) or any of its provisions is a reference to the Act to facilitate the disclosure of wrongdoings or the corresponding provision of that Act.

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

