



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 62

**An Act to amend the Professional Code
to permit the immediate provisional
suspension or restriction of professional
activities**

Introduction

**Introduced by
Mr. Bertrand St-Arnaud
Minister of Justice and Minister responsible for the
administration of legislation respecting the professions**

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EXPLANATORY NOTES

This bill introduces a measure enabling the disciplinary council of a professional order, on the request of a syndic and provided it considers that such action is required to protect the public, to impose on a member of the order being prosecuted for an offence punishable by imprisonment of five years or more either an immediate provisional suspension or restriction of the professional's right to engage in professional activities or use a title reserved for members of the order, or conditions on the professional's continued practice of the profession.

In its decision, the disciplinary council must consider the connection between the alleged offence and the practice of the profession and the possible damage to the honour and dignity of the profession.

The syndic's request is heard and decided by preference, and the disciplinary council's order becomes enforceable upon being served on the professional concerned.

The bill contains rules for the cessation or renewal of the order and provides that a request for immediate provisional suspension or restriction may be made on the basis of a prosecution commenced before the coming into force of the new measure.

LEGISLATION AMENDED BY THIS BILL:

- Professional Code (chapter C-26).

Bill 62

AN ACT TO AMEND THE PROFESSIONAL CODE TO PERMIT THE IMMEDIATE PROVISIONAL SUSPENSION OR RESTRICTION OF PROFESSIONAL ACTIVITIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PROFESSIONAL CODE

1. Section 46.1 of the Professional Code (chapter C-26) is amended by replacing “or 55.2” in subparagraph 7 of the first paragraph by “, 55.2 or 122.0.1”.

2. Section 59.3 of the Code is amended by adding “or of a prosecution described in section 122.0.1” at the end.

3. Section 108.7 of the Code is amended by replacing the second paragraph by the following paragraph:

“The name of a member concerning whom a complaint or a request has been made and the subject of the complaint or request are also public information as of service of the complaint or request by the secretary of the disciplinary council.”

4. Section 116 of the Code is amended by inserting the following paragraph after the second paragraph:

“The disciplinary council shall also be seized of every request made under section 122.0.1.”

5. The Code is amended by inserting the following sections after section 122:

“122.0.1. If a professional is being prosecuted for an offence punishable by imprisonment of five years or more, a syndic may request that the disciplinary council impose an immediate provisional suspension or restriction of the professional’s right to engage in professional activities or use a title reserved for members of the order, or impose conditions on the professional’s continued practice of the profession.

“122.0.2. The syndic’s request is received by the secretary of the disciplinary council, who promptly forwards a copy to the senior chair.

The request must be heard and decided by preference after notice is served on the professional and the Director of Criminal and Penal Prosecutions, or any other authority responsible for the prosecution on which the request is based, by the secretary of the disciplinary council in accordance with the Code of Civil Procedure (chapter C-25) at least two clear juridical days before the beginning of the hearing. The hearing must begin not later than 10 days after service of the request and a decision must be made not later than 7 days after the hearing.

The rules governing the hearing of a complaint apply, with the necessary modifications, to the request.

Following the hearing, the disciplinary council may, if it considers that the protection of the public requires it, make an order imposing either an immediate provisional suspension or restriction of the professional's right to engage in professional activities or use a title reserved for members of the order, or conditions on the professional's continued practice of the profession or use of the title. In its decision, the disciplinary council considers the connection between the alleged offence and the practice of the profession and the possible damage to the honour and dignity of the profession.

The order imposing an immediate provisional suspension or restriction of the right to engage in professional activities or use a title reserved for members of the order or imposing conditions on the continued practice of the profession becomes enforceable upon being served on the respondent by the secretary of the disciplinary council in accordance with the Code of Civil Procedure. However, where the order is rendered in the presence of one of the parties, it is deemed to have been served on that party on being so rendered; the secretary shall indicate in the minutes the presence or absence of the parties when the council renders the order.

The fifth, sixth and seventh paragraphs of section 133 apply to the publication of a notice of the decision.

“122.0.3. The order imposing an immediate provisional suspension or restriction of the right to engage in professional activities or use a title reserved for members of the order or imposing conditions on the continued practice of the profession remains in force until the earliest of the following occurrences:

(1) a decision by the prosecutor to discontinue or withdraw proceedings with regard to all charges in the prosecution on which the request was based;

(2) a judgment of acquittal or a stay of proceedings with regard to all charges in the prosecution on which the request was based;

(3) a syndic's decision not to lodge a complaint with the disciplinary council concerning the offence that gave rise to the charges in the prosecution on which the request was based. The syndic's decision is served on the disciplinary

council by a notice to the council's secretary, who forwards a copy to the chair and the professional;

(4) a final, enforceable decision of the disciplinary council or the Professions Tribunal, as applicable, on the request for provisional striking off the roll or immediate provisional restriction of the right to engage in professional activities made under section 130 with regard to the syndic's complaint concerning the offence that gave rise to the charges in the prosecution on which the request was based;

(5) the expiry of 120 days since the issue of the order under section 122.0.2, provided no complaint was lodged by the syndic and no application for the renewal of the order was made during that time with regard to the offence that gave rise to the charges in the prosecution on which the request was based.

“122.0.4. Section 122.0.2 applies, with the necessary modifications, to an application for the renewal of an order imposing an immediate provisional suspension or restriction of the right to engage in professional activities or use a title reserved for members of an order or imposing conditions on the continued practice of a profession.”

6. Section 164 of the Code is amended by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) a decision of the disciplinary council ordering a provisional striking off the roll or a provisional suspension or restriction of the right to engage in professional activities or use a title reserved for the members of the order, or imposing conditions on the continued practice of the profession, allowing or dismissing a complaint or imposing a penalty;”.

7. Section 166 of the Code is amended by inserting the following subparagraph after subparagraph 1 of the second paragraph:

“(1.1) an order under section 122.0.1 imposing an immediate provisional suspension or restriction of the right to engage in professional activities or use the title reserved for members of an order, or imposing conditions on the continued practice of a profession;”.

8. Section 184.3 of the Code is amended by inserting “and requests” after “complaints”.

TRANSITIONAL AND FINAL PROVISIONS

9. A prosecution commenced before (*insert the date of coming into force of this Act*) may serve as the basis for a request under section 122.0.1 of the Professional Code (chapter C-26), enacted by section 5 of this Act.

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

