



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 65

**An Act respecting the application of the
Act to establish a legal framework for
information technology**

Introduction

**Introduced by
Madam Monique Jérôme-Forget
Minister of Government Services**

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EXPLANATORY NOTES

The object of this bill is to apply to all legislation the principles of neutrality and functional equivalence that are set out in the Act to establish a legal framework for information technology and that make interchangeability and freedom of choice of media and technologies possible.

To that end, the bill introduces interpretative provisions and provisions allowing for the use of means that are functionally equivalent to writing or signing. The bill also entrusts the Minister of Justice with the mandate to reformulate the texts of laws and regulations to harmonize them with the principles and rules set out in the Act to establish a legal framework for information technology.

Lastly, the bill proposes that a number of provisions on the transcription of data be repealed as they became obsolete with the implementation of the Act to establish a legal framework for information technology.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);
- Public Administration Act (R.S.Q., chapter A-6.01);
- Act respecting the Agence des partenariats public-privé du Québec (R.S.Q., chapter A-7.002);
- Act respecting reserved designations and added-value claims (R.S.Q., chapter A-20.03);
- Automobile Insurance Act (R.S.Q., chapter A-25);
- Act respecting parental insurance (R.S.Q., chapter A-29.011);
- Building Act (R.S.Q., chapter B-1.1);
- Act to establish a legal framework for information technology (R.S.Q., chapter C-1.1);

- Act respecting the Centre de services partagés du Québec (R.S.Q., chapter C-8.1.1);
- Act respecting the Commission administrative des régimes de retraite et d’assurances (R.S.Q., chapter C-32.1.2);
- Act respecting the Corporation d’hébergement du Québec (R.S.Q., chapter C-68.1);
- James Bay Region Development and Municipal Organization Act (R.S.Q., chapter D-8.2);
- Act respecting Financement-Québec (R.S.Q., chapter F-2.01);
- Act respecting municipal taxation (R.S.Q., chapter F-2.1);
- Act respecting Immobilière SHQ (R.S.Q., chapter I-0.3);
- Act respecting Investissement Québec and La Financière du Québec (R.S.Q., chapter I-16.1);
- Act respecting the Ministère de l’Emploi et de la Solidarité sociale and the Commission des partenaires du marché du travail (R.S.Q., chapter M-15.001);
- Act respecting the Ministère de l’Immigration et des Communautés culturelles (R.S.Q., chapter M-16.1);
- Act respecting the Ministère des Finances (R.S.Q., chapter M-24.01);
- Act respecting the Ministère des Services gouvernementaux (R.S.Q., chapter M-26.1);
- Act respecting the Ministère du Développement économique, de l’Innovation et de l’Exportation (R.S.Q., chapter M-30.01);
- Act respecting the Ministère du Tourisme (R.S.Q., chapter M-31.2);
- Act respecting the Office Québec-Amériques pour la jeunesse (R.S.Q., chapter O-5.1);
- Act respecting the Régie de l’assurance maladie du Québec (R.S.Q., chapter R-5);
- Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);

- Private Security Act (R.S.Q., chapter S-3.5);
- Act respecting Services Québec (R.S.Q., chapter S-6.3);
- Act respecting the Société de financement des infrastructures locales du Québec (R.S.Q., chapter S-11.0102);
- Act respecting Société Innovatech du Grand Montréal (R.S.Q., chapter S-17.2.0.1);
- Act respecting Société Innovatech du sud du Québec (R.S.Q., chapter S-17.2.2);
- Act respecting Société Innovatech Québec et Chaudière-Appalaches (R.S.Q., chapter S-17.4);
- Act respecting Société Innovatech Régions ressources (R.S.Q., chapter S-17.5).

REGULATIONS AMENDED BY THIS BILL :

- Agreement related to the mandate entrusted to the Corporation des maîtres électriciens du Québec in respect of the administration and application of the Building Act pertaining to the vocational qualification of its members and the financial guarantees required from them (O.C. 887-2001, dated 4 July 2001);
- Agreement related to the mandate entrusted to the Corporation des maîtres mécaniciens en tuyauterie du Québec in respect of the administration and application of the Building Act pertaining to the vocational qualification of its members and the financial guarantees required from them (O.C. 888-2001, dated 4 July 2001);
- Regulation respecting the procedure of the Commission des transports du Québec, made by decision of the Commission on 19 October 1998.

Bill 65

AN ACT RESPECTING THE APPLICATION OF THE ACT TO ESTABLISH A LEGAL FRAMEWORK FOR INFORMATION TECHNOLOGY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 5 of the Act to establish a legal framework for information technology (R.S.Q., chapter C-1.1) is amended by replacing “legal rules applicable to paper documents” in the second paragraph by “same legal rules”.

2. Section 38 of the Act is amended by replacing “any process or combination of processes” by “a process or by a combination of means”.

3. The Act is amended by inserting the following section after section 39:

“39.1. Where the law requires that a person sign a document, the functions fulfilled by that requirement, including identification, identity verification or confirmation, expression of consent or the establishment of a link between the person and the document, may also be fulfilled by other processes or by a combination of means, as provided in this chapter.

Resorting to processes or means other than signing to fulfil such functions does not mean that documents do not contain the same information and are not functionally equivalent under section 9, or that they do not have the same legal effects.”

4. Section 70 of the Act is replaced by the following section:

“70. No provision of this Act shall be construed as limiting rights existing on 1 November 2001 or, if the provision comes into force on a subsequent date, on that later date.

Similarly, no provision of this Act shall be construed as affecting the legal value of documentary communications effected before 1 November 2001 or, if the provision comes into force on a subsequent date, before that date.”

5. The Act is amended by inserting the following sections after section 70:

“70.1. Legislative provisions shall be construed in such a way as to encourage

(1) a broad interpretation of the means or processes that may be used to respect the legal rules and achieve the object or the result sought in the provision, whether the means or processes involve using documents, in particular to act, exercise functions, carry out obligations, or serve as documentary evidence, or sending or receiving documents, or whether the means or processes are used to identify or confirm the identity of a person, express consent or establish a link between a person and a document, as provided for in Chapter III;

(2) competition between means or processes in use at different stages of technological development;

(3) the use, among functionally equivalent means or processes, of the one most appropriate to what is needed and to the means available in the circumstances.

“70.2. The freedom to choose the medium and the technology established in section 2 shall be construed as allowing the person responsible for achieving the object or the result sought in a legislative provision to make an administrative decision in choosing the means or processes referred to in section 70.1, unless that choice is prescribed by law or an agreement. That choice must be made in accordance with section 29 and with due respect for a person’s freedom to choose the medium and technology needed to receive or transmit a document.

However, freedom of choice shall not be construed so as to allow a person to dictate such means or processes to the State in the course of its legislative, executive or judicial functions, unless a person may do so under a law or an agreement. Contact information and any other information allowing communication with the State must be published so as to facilitate that communication.

Choices are based on the technology available and the demands of the situation, taking into account

(1) what is needed and the means available to capture a sound or see a person, a place or an object, to express oneself or be heard, orally or in writing, or to be present or in contact with a person, a place or an object, immediately or in delayed real-time;

(2) the need to retain a document, submit it as evidence or otherwise prove or account for a fact or a situation;

(3) the measures taken to ensure that government choices are coherent within the public administration and to avoid the multiplication of the means of communication the public administration uses to provide a product or service or information on a product or service or to make it possible to obtain a product or service or information on a product or service from it; and

(4) the accessibility, availability, compatibility and interoperability of the processes or means of communication chosen.

“70.3. Verbs used to signify the action prescribed by the legislator, whatever the mood, tense or voice, as well as the nouns and adjectives derived from them, shall be construed as neutral and compatible with the use of any means or process suitable for achieving the object of the legislative provision. This is true, among others, for the verbs access, attest, declare, delete, deposit, detach, erase, exhibit, file, forward, issue, pay, post, record, register, report, seal, show, state and strike.

“70.4. A legislative provision that provides that a person must attend, participate in, sit, come to or be at a meeting, hearing, assembly, sitting or other event where people are in contact, or that a person must appear, be present or otherwise be before another person, in a specific geographical location or in contact with an object, shall be construed to allow the use of information technology, unless, given the context, the provision does not permit the use of that technology or the situation requires that the person be physically present in tangible form.

“70.5. The term “address” used in a legislative provision with reference to a location, including expressions such as address of domicile, address of place of establishment or address of place of work or business, or civic, municipal, professional or residential address, shall be construed as referring to a geographical address.

However, where a legislative provision requires a postal or mailing address to be used to communicate with a person, an association, a partnership or the State, the term “address” shall be construed to allow the use of a technological address in addition to the geographical address.

Nevertheless, where a legislative provision prohibits communicating or requesting an address, or giving or providing one’s address, the prohibition shall be construed as referring to both geographical and technological addresses.

“70.6. A means of communication or object that can be reached by a technological address or by another identifier does not constitute a domicile, establishment, place of work, place of business, residence, head office or other place.

However, the technological address that makes it possible to reach the means of communication or object may be taken into account to determine whether there is an establishment in a specific place, to determine whether the means or object is used to carry out work, an operation or an activity, to operate an enterprise, to communicate, or to otherwise be in a situation where people are in contact in a specific place, or to determine whether that means or object makes it possible to establish a sufficient link with such a place.

The term “place” and the terms and expressions used in legislation to refer to a place shall be construed as referring to a geographical location.

This provision does not modify the rules used to determine whether or not a person has an establishment for the purposes of fiscal laws and regulations.

“70.7. Where a legislative provision provides that the obligation to inform must be met by delivering a document, including notification, to a recipient, the document may be delivered using a means of communication or an object enabling the recipient to receive the document at a technological address. However, the document may be delivered in that manner only if the recipient agrees to receive it at that address or publicly states that documents will be received at a technological address, or if all other means provided by law to contact the recipient have been exhausted.

Nevertheless, where a legislative provision provides that a document may be delivered to its recipient at the place where the recipient exercises the functions of office or works, a document may be delivered at the address of that place or at a technological address where the recipient may be contacted. However, the document may be delivered at the technological address only if that address has been designated, by the recipient or a person in a position of authority in relation to the recipient, as the place where the recipient may receive technology-based documents, directly or through another person.

“70.8. No legislative provision that creates an obligation to inform by requiring that information be disseminated, distributed, released, transmitted, published or made known or public in any other way in a territory, including that of Québec, a metropolitan community, an urban agglomeration, a municipality, a locality or a borough, shall be construed as implying an obligation to use a paper document.

However, to fulfil the obligation to provide information in a territory using a technology-based document that is accessible or available at a technological address, the following conditions must be met:

(1) for information intended for a community as a whole, the appropriate means for accessing the document and examining it at a technological address must be available in the community and their existence made known;

(2) for information intended for a category of persons, the appropriate means must be available as provided in subparagraph 1, or those persons must be required by law or under an agreement to acquire the appropriate means for receiving or accessing a technology-based document; and

(3) for information intended for a person identified by the person’s relationship to a territory or by the fact that the person may be in that territory or may be contacted there, the person must be able to access and examine the document at a technological address from a place situated in that territory, or the person must have publicly stated that the document will be received or examined at a technological address.”

6. The Act is amended by inserting the following sections after section 71:

“71.1. Where a legislative provision requires that information be recorded in a document or that documentary evidence be established, without specifying the mode of expression used for the information, that requirement may be met by means of a written, audio, visual, audio-visual or multimedia document.

“71.2. Where a legislative provision requires that a person communicate orally or verbally, that requirement shall be construed, taking what is needed and the means available into account, to allow that mode of expression, not only on the premises but also by remote access, with or without the possibility of interactive exchanges, between persons who are not necessarily in the same location.

Similarly, where a legislative provision requires that a person communicate in writing or by means of a written document or in text form, that requirement shall be construed, taking what is needed and the means available into account, to allow that mode of expression, not only by remote access with people situated in different locations, but also on the premises, with or without the possibility of interactive exchanges.

“71.3. Where a legislative provision requires that a document accompany another, be annexed or attached to another or be sent, forwarded or transmitted with another or at the same time as another, that requirement shall be construed as allowing those documents to be in different media or be based on different technologies or means of transmission, and as allowing the documents to be sent, forwarded or transmitted one after another, as rapidly as possible, and within any other applicable time limit.

This provision does not apply to documents submitted for registration in the land register or in the register of personal and movable real rights.

“71.4. The delivery of services to citizens and enterprises by government departments and bodies or the delivery of services between those departments or bodies, even if governed by a legislative provision providing that delivery be by written document, may be carried out by means of any document referred to in section 3, whether written, audio, visual, audio-visual or multimedia, if, with that document, the required information may be obtained, the object of the legislative provision achieved or the functions of the legislative provision fulfilled.”

7. The Act is amended by inserting the following section after section 74:

“74.1. A legislative provision that provides that a person may not be held responsible unless a document has been signed, or that only a signature on a document may incur responsibility, shall be construed to include the possibility of resorting to other means or processes functionally equivalent to the signature, as provided in section 39.1.

Provisions requiring a signature, a countersignature or initials shall be construed in the same manner.”

8. The Act is amended by inserting the following sections after section 76:

“**76.1.** The Minister of Justice must have the texts of the laws and regulations to which the Regulations Act (chapter R-18.1) applies reformulated to ensure their harmonization with the principles, rules and interpretative provisions set forth in this Act. The texts must be reformulated in collaboration with the Ministers responsible for the application of the laws and regulations to be reformulated, not later than *(insert the date that is five years after the date of coming into force of this Act)*.

The Minister of Justice must give the necessary instructions

(1) to ensure the technological, media and legal neutrality of legislative expression and its enduring quality in a context of constant technological change;

(2) to remove any obstacles in legislative expression to interchangeability and to freedom of choice of medium or technology, subject to the specific choices that may be made under section 2; and

(3) to ensure that, among functionally equivalent means or processes, the one most appropriate to what is needed and to the means available in the circumstances can be used.

“**76.2.** The texts may be reformulated by sector of activity or by subject matter so as to ensure coherence. Reformulation must serve to express the values to be protected and the result or object to be achieved and foster the use of generic terms or expressions rather than the description or enumeration of means to be used, in particular,

(1) to record information in a document described in section 3;

(2) to identify, verify or confirm the identity of a person linked to a document otherwise than by a signature;

(3) to create, retain and archive, consult, copy, transfer, send, forward or transmit documents; and

(4) to act, communicate, be in contact with a person, a place or an object, exercise functions or carry out obligations, as provided in sections 70.1 and 70.2.

“**76.3.** The Minister of Justice must table the reformulated texts of law in the National Assembly, by sector of activity, by subject matter or as a whole, for consideration by the Assembly.

To that end, the National Assembly must submit the tabled texts to the committee responsible for justice, for consideration. The rules relating to the consideration of a legislative bill at the committee and report stages apply with the necessary modifications. Once the consideration is completed, the committee has one clear day in which to hold a deliberative meeting for the purpose of agreeing on the date of integration of the texts of law into the Revised Statutes of Québec and on any observations, conclusions or recommendations it may wish to submit as regards the harmonization process of the texts of the laws and regulations referred to in sections 76.1 to 76.4.

The Minister responsible for the consolidation of the statutes and regulations must proceed with the integration of the texts of law as adopted by the Assembly into the Revised Statutes of Québec, on the date set by the Assembly. The texts come into force on the date or dates set by the Government, which may not be earlier than the integration.

“76.4. The Minister of Justice must submit the reformulated text of a regulation to the Government for approval, by sector of activity or subject matter or as a whole. The reformulated texts are not subject to the Regulations Act (chapter R-18.1), with the exception of Division V of that Act.

Upon approval, the Minister may proceed with the integration of the text of a regulation into the Revised Regulations of Québec. However, the text of a regulation that relates to the reformulated text of a law tabled under section 76.3 must be integrated at the same time as the reformulated text of the law or later. The approved texts of regulations come into force on the date or dates set by the Government, which may not be earlier than the date of the integration.

Any text of a regulation approved under this section is deemed to have been enacted or approved by the competent authority.”

9. The following provisions, relating to data transcription, are repealed:

(1) section 357 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);

(2) section 91 of the Public Administration Act (R.S.Q., chapter A-6.01);

(3) section 31 of the Act respecting the Agence des partenariats public-privé du Québec (R.S.Q., chapter A-7.002);

(4) section 24 of the Act respecting reserved designations and added-value claims (R.S.Q., chapter A-20.03);

(5) the second paragraph of section 83.18 and section 83.19 of the Automobile Insurance Act (R.S.Q., chapter A-25);

(6) section 106 of the Act respecting parental insurance (R.S.Q., chapter A-29.011);

- (7) section 143.2 of the Building Act (R.S.Q., chapter B-1.1);
- (8) section 32 of the Act respecting the Centre de services partagés du Québec (R.S.Q., chapter C-8.1.1);
- (9) section 51 of the Act respecting the Commission administrative des régimes de retraite et d'assurances (R.S.Q., chapter C-32.1.2);
- (10) section 23 of the Act respecting the Corporation d'hébergement du Québec (R.S.Q., chapter C-68.1);
- (11) section 15.6 of the James Bay Region Development and Municipal Organization Act (R.S.Q., chapter D-8.2);
- (12) section 24 of the Act respecting Financement-Québec (R.S.Q., chapter F-2.01);
- (13) the first sentence of the third paragraph of section 78 of the Act respecting municipal taxation (R.S.Q., chapter F-2.1);
- (14) section 16 of the Act respecting Immobilière SHQ (R.S.Q., chapter I-0.3);
- (15) section 16 of the Act respecting Investissement Québec and La Financière du Québec (R.S.Q., chapter I-16.1);
- (16) section 56 of the Act respecting the Ministère de l'Emploi et de la Solidarité sociale and the Commission des partenaires du marché du travail (R.S.Q., chapter M-15.001);
- (17) section 17 of the Act respecting the Ministère de l'Immigration et des Communautés culturelles (R.S.Q., chapter M-16.1);
- (18) section 14 of the Act respecting the Ministère des Finances (R.S.Q., chapter M-24.01);
- (19) section 18 of the Act respecting the Ministère des Services gouvernementaux (R.S.Q., chapter M-26.1);
- (20) section 18 of the Act respecting the Ministère du Développement économique, de l'Innovation et de l'Exportation (R.S.Q., chapter M-30.01);
- (21) section 17 of the Act respecting the Ministère du Tourisme (R.S.Q., chapter M-31.2);
- (22) section 14 of the Act respecting the Office Québec-Amériques pour la jeunesse (R.S.Q., chapter O-5.1);
- (23) section 16.2 of the Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5);

(24) section 25.3 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);

(25) section 63 of the Private Security Act (R.S.Q., chapter S-3.5);

(26) section 32 of the Act respecting Services Québec (R.S.Q., chapter S-6.3);

(27) section 22 of the Act respecting the Société de financement des infrastructures locales du Québec (R.S.Q., chapter S-11.0102);

(28) the second paragraph of section 13 of the Act respecting Société Innovatech du Grand Montréal (R.S.Q., chapter S-17.2.0.1);

(29) the second paragraph of section 13 of the Act respecting Société Innovatech du sud du Québec (R.S.Q., chapter S-17.2.2);

(30) the second paragraph of section 13 of the Act respecting Société Innovatech Québec et Chaudière-Appalaches (R.S.Q., chapter S-17.4);

(31) the second paragraph of section 13 of the Act respecting Société Innovatech Régions ressources (R.S.Q., chapter S-17.5);

(32) section 6.10 of the Agreement related to the mandate entrusted to the Corporation des maîtres électriciens du Québec in respect of the administration and application of the Building Act pertaining to the vocational qualification of its members and the financial guarantees required from them, enacted by Order in Council 887-2001 dated 4 July 2001;

(33) section 6.10 of the Agreement related to the mandate entrusted to the Corporation des maîtres mécaniciens en tuyauterie du Québec in respect of the administration and application of the Building Act pertaining to the vocational qualification of its members and the financial guarantees required from them, enacted by Order in Council 888-2001 dated 4 July 2001;

(34) section 16.1 of the Regulation respecting the procedure of the Commission des transports du Québec, made by decision of the Commission on 19 October 1998.

10. This Act comes into force on (*insert the date that occurs 45 days after the date of assent to this Act*).

