



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 110

**An Act to amend the General and
Vocational Colleges Act with respect to
governance**

Introduction

**Introduced by
Madam Michelle Courchesne
Minister of Education, Recreation and Sports**

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EXPLANATORY NOTES

The object of this bill is to establish principles of sound governance as regards the administration of general and vocational colleges in the interests of effectiveness, efficiency, transparency, responsibility and accountability. It also repeals Chapter II of the General and Vocational Colleges Act, which concerns regional colleges.

The governance principles introduced by the bill affect, in particular, the composition, operation and responsibilities of a college's board of directors. Under the bill, 11 of the 17 members of the board of directors must qualify as independent directors.

The bill also requires the board of directors to establish a governance and ethics committee, an audit committee and a human resources committee, whose functions are determined by law.

The bill prescribes new rules concerning the college's strategic plan, the disclosure and publication of information, and reporting. It also provides that a three-year report on the performance of the college system must be submitted to the National Assembly.

Lastly, the bill contains consequential, transitional and final provisions.

LEGISLATION AMENDED BY THIS BILL:

- General and Vocational Colleges Act (R.S.Q., chapter C-29).

Bill 110

AN ACT TO AMEND THE GENERAL AND VOCATIONAL COLLEGES ACT WITH RESPECT TO GOVERNANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

GENERAL AND VOCATIONAL COLLEGES ACT

1. The heading of Chapter I of the General and Vocational Colleges Act (R.S.Q., chapter C-29) is replaced by the following heading:

“ESTABLISHMENT AND MISSION OF COLLEGES”.

2. Section 2 of the Act is amended by replacing “for the purpose of providing general and vocational instruction at the college level” by “whose principal mission is the provision of pre-university and technical instruction, in both the regular education and professional development sectors. Applied research, knowledge transfer and services to the community are also part of their mission”.

3. Section 3 of the Act is amended by striking out “appointed under subparagraph *a* of the first paragraph of section 8”.

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

“CHAPTER II

“FUNCTIONS AND POWERS OF COLLEGES”.

5. Section 6.01 of the Act is amended by inserting “and, to that end, establish useful partnerships with the various interested players from those sectors” at the end of paragraph *a*.

6. Sections 8 to 16.2 of the Act are replaced by the following:

“**7.1.** The Minister may designate a college that offers programs and courses in two or more locations that are remote from one another as a regional college.

“CHAPTER III

“BOARD OF DIRECTORS

“DIVISION I

“RULES RELATING TO MEMBERS OF THE BOARD OF DIRECTORS

“8. A college is administered by a board of directors composed of 17 members, as follows:

(1) 11 independent directors, including eight members appointed by the Minister and three members appointed by the board of directors in accordance with its internal by-laws;

(2) two students attending the college, one from the pre-university sector and one from the technical sector, appointed in accordance with section 32 of the Act respecting the accreditation and financing of students' associations (chapter A-3.01);

(3) two teachers at the college, one from the pre-university sector and one from the technical sector, elected by their peers during a meeting called by the college for that purpose;

(4) one member of the non-teaching staff of the college, elected by the member's peers during a meeting called by the college for that purpose; and

(5) the director general, who is a member by virtue of office.

The director general is the only member chosen from the management staff.

If a regional college implements programs of studies in two or more locations, the board may appoint up to two additional independent directors according to its internal by-laws if at least two-thirds of the board members vote in favour of it.

“9. The composition of the board of directors must tend to reflect the various segments of the community served by the college and, if the college carries on activities in more than one location, fairly represent each location.

Moreover, the board of directors must include an equal number of women and men. If there is an odd number of board members, the director general is not counted.

“10. Members of the board of directors qualify as independent directors if, in the opinion of the board or, as the case may be, the Government, they have no direct or indirect relationship or interest, for example of a financial, commercial or professional nature, that is likely to interfere with the quality of their decisions as regards the interests of the college.

A person's philanthropic relations or interests are not considered when determining whether the person qualifies as an independent director.

“11. A member of the board of directors

(1) who is in the employ of the college or has been in such employ in the three years preceding appointment to office,

(2) who has provided goods or services to the college for valuable consideration in the three years preceding appointment to office,

(3) who has an immediate family member, as defined by the board of directors, who is a member of the senior management of the college, or

(4) who is a student attending the college

is deemed not to be an independent director.

“12. A member of the board of directors appointed as an independent director must disclose in writing to the board, and to the Minister if the member was appointed by the Government, any situation likely to affect the member's status.

“13. The sole fact of being in a limited and specific conflict of interest situation does not affect a board member's status as an independent director.

“14. No act or document of a college or decision of the board of directors is invalid because the board does not include an equal number of women and men or because less than two thirds of the board members are independent directors.

“15. A member of the board of directors who exercises functions on a full-time basis within a college may not have a direct or indirect interest in a body, enterprise or association that places the board member's personal interests in conflict with the college's interests. If such an interest devolves to the board member, including by succession or gift, it must be renounced or disposed of with dispatch.

Any other board member who has a direct or indirect interest in a body, enterprise or association that places the board member's personal interests in conflict with the college's interests must disclose it in writing to the chair of the board and abstain from participating in any discussion or decision involving that body, enterprise or association. The board member must also withdraw from a meeting for the duration of the discussion or vote on such a matter.

“16. All members of the board of directors, whether or not they are independent directors, shall assume the same obligation to make decisions in the interest of the college. Board members shall fulfill their obligations with impartiality, independence, loyalty, prudence and diligence in keeping with the college’s mission.

“16.1. Members of the board of directors other than the director general are appointed or elected for three years, except student members, who are appointed for one year.

Board members other than the director general may be reappointed or re-elected once to serve in that capacity.

In addition to terms served as a member of the board of directors, the chair of the board may be reappointed twice to serve in that capacity. However, the total number of terms served in any capacity may not exceed nine consecutive years.

“16.2. A vacant position on the board of directors, other than that of the chair, is filled in the manner prescribed for the appointment of the member to be replaced.

“16.3. Members of the board of directors are remunerated to the extent provided for by the Government

“16.4. A variety of experience and expertise profiles must be sought in appointing independent members of the board of directors in order to enable the board to exercise its functions properly.

“DIVISION II

“OPERATION AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS

“16.5. The board of directors shall exercise its powers in a manner consistent with the college’s mission.

It shall do so in keeping with recognized principles of governance in order to strengthen the stewardship of the college in the interests of effectiveness, efficiency, transparency, responsibility and accountability, among other qualities.

“16.6. The board of directors shall adopt the college’s multi-year strategic plan, which takes into account the policy directions of the strategic plan established by the Minister.

The board shall see to its implementation and inquire into any issue it considers important.

“16.7. A college’s multi-year strategic plan must include

- (1) a description of the college's mission and a statement of its values;
- (2) the context in which the college acts and the main challenges it faces;
- (3) the college's strategic directions and objectives;
- (4) the results targeted over the period covered by the plan; and
- (5) the performance indicators to be used in measuring results.

The strategic plan must include a success plan that consists mainly of specific planning to improve student success. The board of directors shall prepare a document drafted in clear and accessible language explaining the success plan, and distribute it to the students and staff of the college.

The strategic plan must be reviewed annually and updated if necessary.

The board shall send a copy of its strategic plan and of any updated plan to the Minister and the Commission d'évaluation de l'enseignement collégial, and make the plans public.

“16.8. The board of directors is accountable for its decisions and the chair is answerable to the Minister for such decisions.

“16.9. The board of directors shall consult with an advisory committee representative of the college community before making a decision with respect to the college's strategic or financial directions; the committee must be able to obtain the documents relevant to the consultation within a reasonable time beforehand.

“College community” means the management staff, teaching staff, professional staff, support staff and students.

The board shall make a by-law determining the composition of the advisory committee, which is to be chaired by the director general.

“16.10. The functions of the board of directors include

- (1) making sure the college's mission and values and the principles set out in section 16.5 are respected;
- (2) approving the college's budgetary estimates, annual budget, capital plan, financial statements and annual report;
- (3) approving the college's governance rules;
- (4) approving the code of ethics applicable to the board members, the director general, the academic dean and the college staff;

(5) making sure the applicant recruiting process to fill the positions of director general and academic dean provides an equal opportunity for applicants from outside and from within the college and that the procedure makes it possible to examine the applications in an independent and confidential manner;

(6) approving the expertise and experience profiles to be used in appointing its members, the director general and the academic dean;

(7) approving the criteria for evaluating its members and the criteria applicable to the director general and the academic dean;

(8) coming to an agreement with the director general on objectives to be achieved and determining the director general's remuneration, including any incentives, and the procedure for evaluating the director general's performance; the same applies to the academic dean;

(9) approving the criteria for evaluating its performance;

(10) ensuring the effective and efficient management of the college's human, physical, financial and information resources;

(11) establishing the risk management policies;

(12) regularly monitoring the college's financial situation and making sure appropriate controls are in place to preserve the college's short-, medium- and long-term financial health;

(13) making sure the governance and ethics committee, the audit committee, the human resources committee and the other committees exercise their functions properly;

(14) making internal management by-laws;

(15) determining delegations of authority;

(16) adopting measures to evaluate the college's effectiveness, efficiency and performance; and

(17) establishing a dispute resolution mechanism for students who believe they have been wronged by an act, decision or omission of the college or a member of its staff as regards their academic progress, from the time they register until their final record or diploma is issued.

“16.11. A college may, with the authorization of the Minister, establish a college centre for technology transfer whose purpose is, in a particular field, to engage in applied research and informational activities and provide technical assistance to enterprises or organizations.

The Minister must consult with the Minister of Economic Development, Innovation and Export Trade before giving the authorization.

The college may, to the extent and on the conditions it determines, entrust the day-to-day management of a centre to a legal person it designates or to a committee it establishes for that purpose.

“16.12. The board of directors shall designate a chair from among its independent directors.

The offices of chair of the board and director general may not be held concurrently.

“16.13. The chair of the board of directors shall preside at board meetings and see to the board’s smooth operation. In the event of a tie, the chair has a casting vote.

The chair shall also see to the smooth operation of the board committees.

The chair shall assume any other function assigned by the board.

“16.14. The chair of the board of directors shall evaluate the performance of the other board members, including the director general, according to the criteria established by the board.

“16.15. The board of directors shall appoint the director general for a term of at least three but not more than five years.

“16.16. The director general shall work exclusively for the college.

The director general shall assume the full-time administration and day-to-day management of the college within the framework of its by-laws and policies and is answerable to the board for that administration and management.

“16.17. The director general shall make sure the board of directors is given, at its request, sufficient human, physical, financial and information resources for the performance of its functions and those of its committees.

The director general shall propose the strategic plan, budgetary estimates and capital plan, among other things, to the board.

The director general shall assume any other function assigned by the board.

“16.18. The board of directors shall designate, according to its priorities, a chair of a committee established under the first paragraph of section 16.22 to act as a replacement when the chair of the board is absent or unable to act.

“16.19. The board of directors shall ensure that initiation and ongoing training programs for its members are implemented. New board members must receive training in the first year of their term, enabling them to exercise their functions competently.

“16.20. The college shall assume the defence of a member of the board of directors who is prosecuted by a third party for an act done in the exercise of the functions of office and pay any damages resulting from that act, unless the board member committed a gross fault or a personal fault separable from those functions.

In penal or criminal proceedings, however, the college shall pay the defence costs of the board member only if the board member is discharged or acquitted or if it considers that the board member acted in good faith.

“16.21. If the college sues a member of the board of directors for an act done in the exercise of the functions of office and loses its case, it must pay the board member’s defence costs if the court so decides.

If the college wins its case only in part, the court may determine the amount of the defence costs it must pay.

“CHAPTER IV

“COMMITTEES OF THE BOARD OF DIRECTORS

“DIVISION I

“ESTABLISHMENT OF COMMITTEES

“16.22. The board of directors must establish the following committees:

- (1) a governance and ethics committee;
- (2) an audit committee; and
- (3) a human resources committee.

The board may also form an executive committee to determine the calendar of board meetings, prepare draft agendas, see that documents to be presented to the board are drawn up, issue opinions on proposals to be made to the board and ensure that the board’s decisions are carried out.

The board may establish other committees as well to examine specific issues.

“16.23. The committees established under the first and second paragraphs of section 16.22 are composed of independent directors and not more than one member from the college community. The committees must be chaired by an independent director.

“16.24. The chair of the board of directors may take part in committee meetings.

“DIVISION II

“GOVERNANCE AND ETHICS COMMITTEE

“16.25. The functions of the governance and ethics committee include

- (1) formulating governance rules and a code of ethics for the conduct of the affairs of the college;
- (2) formulating a code of ethics applicable to board members and the college staff, subject to any applicable provisions of a regulation made under sections 3.0.1 and 3.0.2 of the Act respecting the Ministère du Conseil exécutif (chapter M-30);
- (3) developing expertise and experience profiles to be used in appointing board members, except the chair of the board and the director general;
- (4) formulating criteria for evaluating board members;
- (5) formulating criteria for evaluating the performance of the board; and
- (6) developing initiation and ongoing training programs for board members.

The committee shall conduct the evaluation referred to in subparagraph 5 of the first paragraph in accordance with the criteria approved by the board.

“DIVISION III

“AUDIT COMMITTEE

“16.26. The audit committee must include members with accounting or financial expertise.

At least one committee member must be a member of one of the professional orders of accountants governed by the Professional Code (chapter C-26).

“16.27. The functions of the audit committee include

- (1) approving the annual internal audit plan;
- (2) making sure that a plan for the optimal utilization of the college’s resources is put in place, and following up on that plan;
- (3) seeing to it that internal control mechanisms are put in place, and making sure that they are appropriate and effective;
- (4) making sure the necessary follow-ups are carried out with the external auditors;

(5) making sure a risk management process for the conduct of the affairs of the college is put in place and followed;

(6) reviewing any activity likely to be detrimental to the college's financial health that is brought to its attention by the internal auditor or another person;

(7) ensuring the quality of the financial statements;

(8) examining the financial statements with an external auditor appointed by the board of directors; and

(9) recommending the approval of the financial statements by the board.

“16.28. The audit committee must notify the board of directors in writing on discovering operations or management practices that are unsound or do not comply with the law or the regulations or with the policies of the college.

“16.29. The internal audit department shall operate under the authority of the audit committee.

The head of the internal audit department is under the administrative authority of the director general, but reports to the audit committee on audit activities.

“DIVISION IV

“HUMAN RESOURCES COMMITTEE

“16.30. The functions of the human resources committee include

(1) making sure human resources policies are put in place;

(2) developing and proposing an expertise and experience profile to be used in appointing the director general and the academic dean;

(3) ensuring that the appointment procedure for the director general and the academic dean is applied;

(4) formulating and proposing criteria for evaluating the director general and the academic dean, and making recommendations to the board of directors regarding the remuneration and other conditions of employment of the director general and the academic dean;

(5) establishing a succession planning program for the director general and the academic dean; and

(6) receiving the candidacies the director general proposes for the management positions under the director general's immediate authority, examining the candidacies and submitting its conclusions to the director general.

“CHAPTER V

“REPORTING AND INFORMATION RELATING TO GOVERNANCE

“16.31. Every year, not later than 1 December, a college must send the Minister an annual report on its activities for its preceding fiscal year.

The report must include the results obtained measured against the objectives set in the strategic plan and contain the summary, along with the conclusions and recommendations, of the following reports submitted to the board of directors:

(1) the report of the governance and ethics committee on its activities during the fiscal year, including a summary of its evaluation of the performance of the board;

(2) the report of the audit committee on the discharge of its mandate and on the optimal resource utilization plan; and

(3) the report of the human resources committee on the discharge of its mandate.

The report must also contain a status report on how the disputes referred to in paragraph 17 of section 16.10 are dealt with and include a statement by the administration and the board of directors concerning the results for the year measured against the college’s mission, values and objectives.

“16.32. The college must send the Minister the approved minutes of board meetings and the related documents.

“16.33. The board of directors shall post the following information on the college’s website:

(1) the code of ethics applicable to its members and the college staff, as well as their rules of professional conduct;

(2) the dates of appointment and expiry of term of each of its members, and whether or not they hold the status of independent director;

(3) the identification of any other board of directors on which a board member sits;

(4) a summary of the expertise and experience profile of each of its members and a statement of the member’s attendance at board and committee meetings;

(5) the situations it intends to investigate to determine whether a member qualifies as an independent director and the definition of immediate family within the meaning of section 11;

(6) the remuneration and benefits paid to each of its members;

(7) the remuneration, including any variable pay, and the other benefits of the director general and the academic dean;

(8) the fees paid to the external auditor;

(9) the results of the application of the general and specific indicators;

(10) the decisions it makes that are public under the law; and,

(11) at least 30 days before a public information and consultation meeting is held under section 16.36, any document of use in considering and discussing the subjects on the agenda.

The information required under this section must also be available for consultation on the premises of the college by any means the board considers appropriate and must be kept up to date.

“16.34. After consulting with the chairs of the college boards of directors, the Minister shall establish qualitative and quantitative general indicators and their definitions, to be used by the colleges in their reporting.

The general indicators shall concern, among other things,

(1) the utilization of human, physical, financial and information resources;

(2) instruction;

(3) applied research and knowledge transfer;

(4) the community services provided;

(5) manpower training activities;

(6) the partnerships established with the labour, applied research, technological innovation and regional development sectors;

(7) the results for the year measured against the objectives of the strategic plan adopted by the board of directors;

(8) the results for the year and the two preceding years measured against the benchmarking measures identified by the Minister; and

(9) the results for the year measured against the college’s mission, values and objectives, and the principles mentioned in section 16.5.

A college may also agree with the Minister on certain specific indicators that reflect its distinctive characteristics.

Every year, at the time determined by the Minister, the college must send the Minister the results of the application of both the general and the specific indicators.

“16.35. Every three years, the Minister must submit a report to the National Assembly on the performance of the public college system. The report must take into account the benchmarking data that the boards of directors of the colleges must make public.

“16.36. The board of directors shall see to it that the college holds a public information and consultation meeting at least once a year to report to the community served by the college on its activities, the services provided, the results achieved, its priorities, the strategic plan adopted, its financial situation and its management, and to answer questions.

To that end, a notice of the meeting must be published in at least one newspaper in the regions served and posted on the college’s website. The meeting must be held not less than 30 days after the notice is given.”

7. The Act is amended by inserting the following before section 17:

“CHAPTER VI

“ACADEMIC COUNCIL”.

8. The Act is amended by inserting the following after section 17.0.2:

“CHAPTER VII

“SPECIAL PROGRAM OF TECHNICAL STUDIES”.

9. Section 17.2 of the Act is repealed.

10. The Act is amended by inserting the following before section 18:

“CHAPTER VIII

“REGULATIONS”.

11. Section 18.0.2 of the Act is amended by inserting the following paragraph after paragraph *d*:

“(e) the standards and conditions relating to the development and implementation of cooperation programs in the field of college education with bodies outside Québec.”

12. Section 19 of the Act is amended

(1) by replacing paragraph *d* by the following paragraph:

“(d) the composition of the academic council, the term of office of its members, the scope of its powers and the composition of the executive committee;”;

(2) by striking out “or 17.2” in paragraph *f*.

13. The Act is amended by inserting the following after section 19.1:

“CHAPTER IX

“ACADEMIC DEAN”.

14. Section 20 of the Act is amended

(1) by striking out “a director general and” and “of the first director general and” in the first paragraph;

(2) by striking out “of the director general and” in the second paragraph;

(3) by striking out the third paragraph.

15. Sections 20.1 to 22 of the Act are repealed.

16. The Act is amended by inserting the following before section 24:

“CHAPTER X

“TUITION AND ADMISSION FEES”.

17. The Act is amended by inserting the following after section 24.5:

“CHAPTER XI

“FINANCIAL PROVISIONS”.

18. Section 27.1 of the Act is repealed.

19. The Act is amended by inserting the following after section 28.2:

“CHAPTER XII

“PROVISIONAL ADMINISTRATION AND WITHHOLDING OF SUBSIDIES”.

20. The Act is amended by inserting the following after section 29.8:

“CHAPTER XIII

“AMALGAMATION OF COLLEGES”.

21. Section 30 of the Act is amended by striking out “appointed under subparagraph *a* of the first paragraph of section 8” in the second paragraph.

22. The Act is amended by inserting the following after section 30.0.2:

“CHAPTER XIV

“SERVICE PROVIDER”.

23. Chapter II of the Act, comprising sections 31 to 70, is repealed.

24. Section 71 of the Act is amended by replacing the first paragraph by the following paragraph:

“71. No person or body other than a college established under this Act may use the terms “general and vocational college”, “general college” or “vocational college” or give the impression that the person or body operates a college governed by this Act, unless authorized to do so by the Minister.”

TRANSITIONAL AND FINAL PROVISIONS

25. The Collège régional de Lanaudière, a regional college established by letters patent under section 31 of the General and Vocational Colleges Act (R.S.Q., chapter C-29), is continued as a college under the name Collège régional de Lanaudière, and the provisions of this Act that are applicable to a college become applicable to it, with the necessary modifications.

26. Before (*insert the date that is 12 months after the date of coming into force of this section*), the board of governors of a college must prescribe provisions for the transition between the board of governors in office on (*insert the date of coming into force of this section*) and the new board of directors established in accordance with the General and Vocational Colleges Act, as amended by this Act, and take any measure required to ensure compliance with that Act, as amended by this Act.

The board may, among other things, modify the date on which the current board members’ term of office ends and determine how any measures are to be applied to ensure compliance with the General and Vocational Colleges Act, as amended by this Act, as soon as practicable and not later than (*insert the date that is 18 months after the date of coming into force of this section*).

The board sends the Minister a copy of the provisions prescribed and the measures taken under this section as soon as they are adopted.

27. If the board of governors fails to comply with section 26 within the time prescribed in that section, the Government may take the measures and prescribe the provisions called for, which are then deemed to have been taken and prescribed by the board, in accordance with the General and Vocational Colleges Act, as amended by this Act.

28. Subject to section 26, the members of the board of governors in office on (*insert the date of coming into force of this section*) continue in office for the unexpired portion of their term on the same terms until they are replaced or reappointed in keeping with the General and Vocational Colleges Act, as amended by this Act.

The same applies to the chair of the board and the director general in office on (*insert the date of coming into force of this section*). Those offices may continue to be occupied concurrently until the positions are filled in accordance with the General and Vocational Colleges Act, as amended by this Act.

29. The board of directors may, in accordance with the General and Vocational Colleges Act, as amended by this Act, and with respect to a board member in office on (*insert the date of coming into force of this section*), determine that a board member has the status of independent director.

30. Despite section 16.23 of the General and Vocational Colleges Act, enacted by section 6 of this Act, a board member in office on (*insert the date of coming into force of this section*) who has not obtained the status of independent director under section 29 may be a member of a committee referred to in section 16.23 until the number of independent directors on the board of directors reaches 11.

31. In addition to the transitional provisions provided for in this Act, the Government may, by a regulation made before (*insert the date that is one year after the date of coming into force of this section*), enact any other transitional provision or measure conducive to the carrying out of this Act.

A regulation made under this section is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1) or to the date of coming into force set out in section 17 of that Act.

32. This Act comes into force on the date or dates to be set by the Government.

However, the second paragraph of section 9 of the General and Vocational Colleges Act, enacted by section 6 of this Act, comes into force not later than 1 July 2011.

