



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-THIRD LEGISLATURE

Bill 37

**An Act respecting the Commissioner
for Children's Well-Being and Rights**

Introduction

**Introduced by
Mr. Lionel Carmant
Minister Responsible for Social Services**

**Québec Official Publisher
2023**

EXPLANATORY NOTES

This bill provides for the appointment by the National Assembly of a Commissioner for Children's Well-Being and Rights, whose functions are to promote the well-being of children and respect for their rights as well as to see to the protection of the interest of the child.

More specifically, the bill provides that the Commissioner for Children's Well-Being and Rights must, among other things,

(1) implement means to gather the concerns and opinions of children, in particular with regard to societal issues;

(2) analyze the state of well-being of children in Québec and, each year, draw up an overview of that state;

(3) analyze the impacts of government policies on children's well-being;

(4) inform the public about children's well-being and rights and raise awareness on those matters, in particular through information and educational programs;

(5) support children in the exercise of their rights by directing them to the appropriate resources and assisting them in their efforts where necessary;

(6) assess the implementation of programs and the provision of services that are intended for children and are under the responsibility of public bodies;

(7) monitor all deaths of children for which an investigation or an inquest has been conducted under the Coroners Act;

(8) form an advisory committee composed of children and young adults to obtain their opinions on any question concerning a matter within the scope of the Commissioner's functions; and

(9) where the Commissioner considers it necessary or on request from the National Assembly, the Government or any minister, provide them with opinions and recommendations the Commissioner considers appropriate on any question concerning a matter within the scope of the Commissioner's functions.

The bill provides that the Commissioner also exercises certain functions of office with regard to young adults whose situation has already been taken in charge by the director of youth protection or who have already been the subject of a custody or supervision measure under the Youth Criminal Justice Act. It also provides that, each year, the Commissioner must produce an activity report that must be sent to the President of the National Assembly, as for any other report the Commissioner produces within the exercise of the functions of office.

Under the bill, the Government must appoint an Associate Commissioner dedicated to Indigenous Children's Well-Being and Rights who assists and advises the Commissioner to see that the interests of Indigenous children and young adults are taken into consideration and that each of the Commissioner's opinions and recommendations takes into account the historic, social and cultural factors specific to them.

The bill grants the Commissioner the power, among others, to conduct any investigation the Commissioner considers useful for assessing the public bodies' implementation of programs and provision of services that are intended for children. It also sets out the general rules for the organization of the office of Commissioner, in particular as concerns the Commissioner's personnel, and provides certain immunities to the Commissioner, the Associate Commissioner and the members of the Commissioner's personnel.

The bill also provides that the Commissioner is to cooperate with the Commission des droits de la personne et des droits de la jeunesse, the Public Protector or, when the Commissioner considers it necessary, any public body to provide for mechanisms for concerted action to harmonize their interventions with regard to children and young adults.

Lastly, the bill includes an amending provision to allow the coroner or the Chief Coroner to forward to the Commissioner any report of investigation concerning the death of a child, as well as miscellaneous and final provisions.

LEGISLATION AMENDED BY THIS BILL:

- Coroners Act (chapter C-68.01).

Bill 37

AN ACT RESPECTING THE COMMISSIONER FOR CHILDREN'S WELL-BEING AND RIGHTS

AS Québec has declared itself bound by the Convention on the Rights of the Child by Order in Council 1676-91 dated 9 December 1991;

AS Québec is a society that cares about children and that makes children's well-being a core concern;

AS children's rights are protected by law in Québec, in particular by the Civil Code of Québec;

AS it is essential to take into account the interest of children in government policies that concern their well-being;

AS Québec wants to take preventive action to improve the well-being of children and facilitate the exercise of their rights;

AS a particular approach must be favoured to take into account the historic, social and cultural factors specific to Indigenous children;

AS it is necessary that a person be devoted exclusively to promoting the well-being of children and respect for their rights;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPOINTMENT

1. On the proposal of the Prime Minister and with the approval of two-thirds of its Members, the National Assembly appoints a Commissioner for Children's Well-Being and Rights.

The Assembly determines, in the same manner, the remuneration, employee benefits and other conditions of employment of the Commissioner.

The person proposed by the Prime Minister must have work experience in the promotion of the well-being of children and of respect for their rights as well as in-depth knowledge in that matter.

2. Before entering into office, the Commissioner must take the oath set out in Schedule I before the President of the National Assembly.

3. The Commissioner is appointed for a five-year term that may be renewed only once. At the expiry of the term, the Commissioner remains in office until replaced or reappointed.

4. The Commissioner may resign at any time by giving written notice to the President of the National Assembly. The Commissioner may be dismissed only by a resolution of the Assembly approved by two-thirds of its Members.

CHAPTER II

FUNCTIONS AND POWERS

DIVISION I

FUNCTIONS

5. The functions of the Commissioner are to promote the well-being of children and respect for their rights as well as to see to the protection of the interest of the child.

For those purposes, the Commissioner must, in particular,

(1) implement means to gather the concerns and opinions of children, in particular with regard to societal issues;

(2) analyze the state of well-being of children in Québec and, each year, draw up an overview of that state;

(3) analyze the impacts of government policies on children's well-being;

(4) inform the public about children's well-being and rights and raise awareness on those matters, in particular through information and educational programs;

(5) support children in the exercise of their rights by directing them to the appropriate resources and assisting them in their efforts where necessary;

(6) assess the implementation of programs and the provision of services that are intended for children and are under the responsibility of public bodies;

(7) monitor all deaths of children for which an investigation or an inquest has been conducted under the Coroners Act (chapter C-68.01);

(8) form an advisory committee composed of children and young adults to obtain their opinions on any question concerning a matter within the scope of the Commissioner's functions; and

(9) where the Commissioner considers it necessary or on request from the National Assembly, the Government or any minister, provide them with opinions and recommendations the Commissioner considers appropriate on any question concerning a matter within the scope of the Commissioner's functions.

The Commissioner also exercises, with regard to young adults, the functions set out in subparagraphs 3 to 6 of the second paragraph.

For the purposes of this Act,

“child” means a person under 18 years of age;

“public body” means a government department as well as a body referred to in any of sections 4 to 7 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1);

“young adult” means a person of at least 18 years of age and not more than 25 years of age whose situation has already been taken in charge by the director of youth protection or who has already been the subject of a custody or supervision measure under the Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1).

6. The Commissioner exercises the functions of office with due regard for the responsibilities otherwise assigned to the Commission des droits de la personne et des droits de la jeunesse by the Charter of human rights and freedoms (chapter C-12) and the Youth Protection Act (chapter P-34.1).

7. The Commissioner exercises the functions of office exclusively and on a full-time basis.

DIVISION II

POWERS

8. For the discharge of the functions of office, the Commissioner may, in particular,

(1) receive and hear observations from persons or groups;

(2) conduct or commission such analyses, studies and research as the Commissioner considers necessary;

(3) call on outside experts to report on one or more specific points determined by the Commissioner;

(4) assign a member of the Commissioner's personnel or an expert mandated by the Commissioner to a public body and require that body to provide the premises and equipment that the Commissioner considers necessary; and

(5) at any time, produce a report on any matter within the scope of the Commissioner's functions.

9. A public body must, on request, allow the Commissioner to have access to and make copies of records, reports, documents or information, in whatever form, that are necessary to the exercise of the functions of office referred to in subparagraphs 2, 3 and 6 of the second paragraph of section 5, and provide the Commissioner with any related information and explanation.

10. The Commissioner may, on the Commissioner's own initiative, conduct any investigation the Commissioner considers useful for the exercise of the functions of office referred to in subparagraph 6 of the second paragraph of section 5.

The Commissioner may also conduct such an investigation at the National Assembly's request. The Commissioner produces a report following any investigation so conducted.

The Commissioner and every person specially authorized by the Commissioner to investigate are vested, for the purposes of the investigation, with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

11. The Commissioner cooperates with the Commission des droits de la personne et des droits de la jeunesse, the Public Protector or, when the Commissioner considers it necessary, any public body to provide for mechanisms for concerted action to harmonize their interventions with regard to children and young adults.

12. Each year, within four months after the end of the fiscal year, the Commissioner produces a report on the Commissioner's activities.

In the report, the Commissioner points out any matter or any case that, in the Commissioner's opinion, should be brought to the attention of the National Assembly. The Commissioner also mentions any difficulties encountered in the Commissioner's investigations.

The Commissioner also includes in the report the overview of the state of well-being of children in Québec provided for in subparagraph 2 of the second paragraph of section 5.

13. The Commissioner sends the reports produced under this division to the President of the National Assembly.

The President tables the reports in the National Assembly within 15 days after receiving them or, if the Assembly is not sitting, within 15 days after the opening of the next session or after resumption.

CHAPTER III

ASSOCIATE COMMISSIONER DEDICATED TO INDIGENOUS CHILDREN'S WELL-BEING AND RIGHTS

14. The Government appoints an Associate Commissioner dedicated to Indigenous Children's Well-Being and Rights from among the persons recommended by the Commissioner after consultation with the Indigenous communities.

The Associate Commissioner must have experience working with an Indigenous community and possess in-depth knowledge regarding the promotion of the well-being of Indigenous children and of respect for their rights.

15. The Associate Commissioner reports to the Commissioner and assists the latter in the exercise of the functions of office so that the interests of Indigenous children and young adults are taken into account.

The Associate Commissioner also advises the Commissioner so that each of the Commissioner's opinions and recommendations takes into account the historic, social and cultural factors specific to them.

16. Within the framework of the Associate Commissioner's responsibilities, the Associate Commissioner consults the Indigenous communities to gather their concerns and opinions.

17. The Government determines the remuneration, employee benefits and other conditions of employment of the Associate Commissioner. The Associate Commissioner's term must not exceed five years, but the Associate Commissioner remains in office at the expiry of that term until reappointed or replaced. The Government may dismiss the Associate Commissioner before the end of the term, but only for cause.

18. Each year, the Associate Commissioner draws up an overview of the state of well-being of Indigenous children in Québec.

The Commissioner includes the overview in the activity report referred to in section 12.

CHAPTER IV

ORGANIZATION

19. If absent or unable to act or if the office of Commissioner is vacant, the Commissioner is replaced by a person appointed temporarily for such purpose by the Government which, if need be, determines the remuneration, employee benefits and other conditions of employment of that person.

20. Members of the Commissioner's personnel are appointed in accordance with the Public Service Act (chapter F-3.1.1).

The Commissioner exercises, with regard to the personnel, the powers conferred by that Act on a chief executive officer.

21. The Commissioner establishes, without further formality, the Commissioner's human resources management policies with respect to planning, organization and development.

Subject to the appropriations granted by Parliament, the Commissioner determines the staff needed for the exercise of the functions of office, the staff distribution and the level of the staff members' positions.

22. The Commissioner prepares annual budget estimates and submits them to the Office of the National Assembly, which approves them with or without modification.

If, during a fiscal year, the Commissioner foresees that the budget estimates approved by the Office of the National Assembly will be exceeded, the Commissioner prepares supplementary budget estimates and submits them to the Office of the National Assembly, which approves them with or without modification.

The provisions of the Financial Administration Act (chapter A-6.001) applicable to budget-funded bodies, except sections 30 and 31, apply to the management of the Commissioner's financial resources.

23. The Public Administration Act (chapter A-6.01), except subparagraph 6 of the first paragraph and the second paragraph of section 9, sections 10 to 23, subparagraph 3 of the second paragraph of section 24 and the third paragraph of that section, sections 25 to 28, section 44, the fourth paragraph of section 45, sections 46, 48, 49, 50 and 53, the third paragraph of section 57, and sections 74 to 75, 77.3 and 78, applies to the Commissioner. The report referred to in section 24 of that Act is included in the activity report referred to in section 12 of this Act.

The President of the National Assembly tables in the Assembly the Commissioner's strategic plan referred to in section 8 of the Public Administration Act.

24. The Commissioner may, by regulation, determine the conditions applicable to the contracts the Commissioner may enter into.

The regulation comes into force on the date it is approved by the Office of the National Assembly. It is published in the *Gazette officielle du Québec*.

CHAPTER V

IMMUNITY

25. The Commissioner, the experts the Commissioner calls on under paragraph 3 of section 8, the Associate Commissioner or the members of the Commissioner's personnel cannot be compelled to make a deposition relating to information obtained in the exercise of their functions or to produce a document containing such information.

26. No judicial proceedings may be brought against the Commissioner, the Associate Commissioner or the members of the Commissioner's personnel for an act or omission in good faith in the exercise of their functions.

27. No civil action may be brought because of the publication of an opinion, recommendation or report of the Commissioner, or the publication, in good faith, of an extract from or summary of such an opinion, recommendation or report.

28. Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be brought, nor any injunction granted, nor any other provisional measure taken against the Commissioner, the experts the Commissioner calls on under paragraph 3 of section 8, the Associate Commissioner or the members of the Commissioner's personnel in the exercise of their functions.

A judge of the Court of Appeal may, on an application, summarily annul a decision, order or injunction made or granted contrary to this section.

CHAPTER VI

AMENDING PROVISION

CORONERS ACT

29. Section 99 of the Coroners Act (chapter C-68.01) is amended by adding the following paragraph at the end:

“The coroner or the Chief Coroner shall forward to the Commissioner for Children's Well-Being and Rights such a copy of any report of investigation concerning the death of a person under 18 years of age.”

CHAPTER VII

MISCELLANEOUS AND FINAL PROVISIONS

30. The Commissioner must, not later than five years after the date of coming into force of this Act, report to the National Assembly on the implementation of this Act.

The Commissioner sends the report to the President of the National Assembly, who tables it within 30 days after receiving it or, if the Assembly is not sitting, within 30 days of resumption.

31. The Minister of Health and Social Services is responsible for the administration of this Act.

32. The provisions of this Act come into force on *(insert the date of assent to this Act)*, except

(1) sections 5, 6, 8 to 15, 17 and 19 to 29, which come into force on the date on which the first Commissioner for Children’s Well-Being and Rights appointed under section 1 takes office;

(2) sections 16 and 18, which come into force on the date on which the first Associate Commissioner dedicated to Indigenous Children’s Well-Being and Rights appointed under section 14 takes office.

SCHEDULE I
(*Section 2*)

OATH

I declare under oath that I will fulfil the duties of my office with honesty, impartiality and justice and that I will not accept any sum of money or any other consideration for what I do in the discharge of my duties apart from what is allowed to me by law.

I further declare under oath that I will not reveal, unless duly authorized, any information I have obtained in the discharge of my duties.

