



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 46

An Act respecting independent police investigations

Introduction

**Introduced by
Mr. Robert Dutil
Minister of Public Security**

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EXPLANATORY NOTES

This bill amending the Police Act makes the conduct of an independent investigation mandatory in every case where a person, other than an on-duty police officer, dies, is seriously injured or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody. The director of the police force involved will be required to inform the Minister of Public Security of the occurrence, and the latter will direct another police force to conduct an independent investigation in order to guarantee the impartiality of the investigation. The Minister is also empowered to issue directives applicable to independent investigations and to order a new independent investigation by another police force at any time.

The Police Act is further amended to provide for the establishment of a civilian oversight bureau, to be known as the “Bureau civil de surveillance des enquêtes indépendantes”, whose mandate is to oversee independent investigations and verify whether they are being conducted impartially. The Bureau is also responsible for verifying whether the directives issued by the Minister are being complied with, and will report on its findings to the Minister.

The Government will appoint the director and the assistant director of the Bureau on recommendation of the Minister. They must be either a retired judge, or an advocate who has been a member of the Bar for at least 10 years, and must devote their time exclusively to the duties of their office. The director, the assistant director and the personnel members of the Bureau must never have been a peace officer or a member of the non-police personnel of a police force. They must be of good moral character and never have been convicted of an offence under the Criminal Code, or under any of the Acts listed in section 183 of the Code, that is related to the employment.

A procedure for overseeing independent investigations is established. The representative of the police force conducting the independent investigation must cooperate with the Bureau and communicate to the observer any information or document the observer deems useful for the oversight of the investigation. If, during or after the investigation, the director of the Bureau discovers an irregularity that may compromise the impartiality of the investigation, he or she must notify the Minister, who then designates another police force to conduct a new investigation.

Provisions are included to ensure the confidentiality of any information or document obtained or produced by the Bureau. No judicial proceedings may be brought against the personnel members of the Bureau for an act or omission in good faith in the exercise of their functions.

Lastly, the bill provides that the coroner may, in the cases and on the conditions determined by government regulation, grant financial assistance to members of a victim's family to cover expenses incurred for legal assistance and representation during a coroner's inquest following an occurrence that triggered an independent investigation.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Police Act (R.S.Q., chapter P-13.1);
- Act respecting the determination of the causes and circumstances of death (R.S.Q., chapter R-0.2).

Bill 46

AN ACT RESPECTING INDEPENDENT POLICE INVESTIGATIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

POLICE ACT

1. The Police Act (R.S.Q., chapter P-13.1) is amended by inserting the following chapter after section 289 :

“**CHAPTER III.1**

“INDEPENDENT INVESTIGATIONS

“**DIVISION I**

“CONDUCT OF INDEPENDENT INVESTIGATION

“**289.1.** An independent investigation must be conducted if a person, other than an on-duty police officer, dies, is seriously injured or is injured by a firearm used by a police officer during a police intervention or while the person is in police custody.

The director of the police force involved must inform the Minister of the occurrence without delay.

The Minister must, upon being informed, direct another police force to conduct the independent investigation in order to guarantee the impartiality of the investigation.

The Minister may at any time order that a new investigation be conducted by another police force.

“**289.2.** The Minister may issue directives applicable to independent investigations.

“DIVISION II

“BUREAU CIVIL DE SURVEILLANCE DES ENQUÊTES INDÉPENDANTES

“§1. — *Establishment, mandate and composition*

“**289.3.** A civilian oversight bureau to be known as the “Bureau civil de surveillance des enquêtes indépendantes” is hereby established.

“**289.4.** The mandate of the Bureau is to oversee independent investigations to verify whether they are being conducted impartially.

The Bureau shall also verify whether the directives issued by the Minister under section 289.2 are being complied with, and report on its findings to the Minister.

“**289.5.** The Government, on the recommendation of the Minister, shall appoint the director and the assistant director of the Bureau. The director and the assistant director must meet the conditions set out in paragraphs 1 to 3 of section 289.8 and must be either a retired judge, or an advocate who has been a member of the Bar for at least 10 years.

The director and the assistant director shall be appointed for a fixed term of five years or less. At the expiry of their terms, they shall remain in office until reappointed or replaced.

The Government shall determine their remuneration, employee benefits and other conditions of employment.

“**289.6.** Before taking office, the director and the assistant director must take the oaths provided in Schedules B and D before a judge of the Court of Québec.

“**289.7.** The director and the assistant director must devote their time exclusively to the duties of their office.

“**289.8.** The personnel of the Bureau shall be appointed in accordance with the Public Service Act (chapter F-3.1.1).

A person must meet the following minimum requirements to be hired as a member of the personnel of the Bureau and remain as such :

(1) be of good moral character;

(2) not have been convicted, in any place, of an offence for an act or omission that is either an offence under the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or an offence, referred to in section 183 of that Code, under any of the Acts listed in that section, and that is related to the employment; and

(3) never have been a peace officer or a member of the non-police personnel of a police force.

“289.9. The director of the Bureau shall direct its activities and coordinate its work. The director shall define the duties and the responsibilities of the personnel of the Bureau and direct their work.

The director shall also act as liaison between the Bureau and the Minister.

If absent or unable to act, the director shall be replaced by the assistant director.

“289.10. An act, document or writing is binding on or may be attributed to the director or the assistant director only if it is signed by them or, to the extent provided in the delegation of signature instrument, by a member of the personnel of the Bureau. The delegation of signature instrument must be published in the *Gazette officielle du Québec* but takes effect upon its signing by the director.

“289.11. The director, the assistant director and the members of the personnel of the Bureau designated by the director shall act as observers of independent investigations.

“289.12. With the authorization of the director or, in the director’s case, with the authorization of the Minister, an observer may complete the on-going oversight of an investigation even if he or she no longer occupies that function.

“289.13. An observer who has knowledge of anything that could cast a doubt on his or her impartiality may not be assigned to oversee an investigation, or must withdraw from the file and immediately notify the director.

“§2. — Oversight procedure

“289.14. The Minister shall notify the director of the Bureau that an independent investigation is to be conducted. The Minister shall inform the director of what police force is to conduct the investigation and of the name and contact details of the representative of that police force, other than an investigator assigned to the investigation, who is to act as liaison between the Bureau and the police force.

“289.15. The director shall designate the person who is to act as the Bureau’s observer to oversee the independent investigation.

If more than one observer is designated, the director shall determine which is to act as liaison with the police force conducting the investigation.

“289.16. The observer designated to act as liaison with the police force conducting the independent investigation shall, within 24 hours after being

designated, communicate with the representative of the police force to obtain a status report.

“289.17. At the request of an observer, in the exercise of duties in that capacity, the representative of the police force conducting the independent investigation must communicate to the observer any information or document the observer deems useful for the oversight of the investigation.

An observer who deems it useful for the oversight of the independent investigation may visit the scene of the occurrence that triggered the investigation while it is cordoned off by a police force. The observer shall, on request, identify himself or herself and show a certificate of capacity. Any police officer on duty at the scene of the incident shall give the observer access to the scene.

“289.18. In the course of the oversight of an independent investigation, an observer may not have any direct or indirect contact with a member of the police force conducting the investigation, other than the representative of that police force, or with a member of the police force involved in the occurrence being investigated.

“289.19. The representative of the police force conducting the independent investigation shall cooperate with any observer.

The director of the Bureau shall notify the Minister should the representative of the police force not cooperate.

“289.20. An observer who, while overseeing an independent investigation, discovers an irregularity that may compromise the impartiality of the investigation, or notes that the representative of the police force conducting the investigation is not cooperating, shall so inform the director of the Bureau.

If of the opinion that the independent investigation is affected by such an irregularity and that it cannot be corrected, the director shall notify the Minister. In that case, the Minister shall designate another police force to conduct a new investigation and shall notify the director of the Bureau in accordance with section 289.14.

“289.21. As soon as the police force’s independent investigation report is completed, the director of the police force shall send a copy to the director of the Bureau.

Within 20 days after receipt of the report, the observer shall present written observations and conclusions on the independent investigation to the director of the Bureau.

“289.22. After examining the observations and conclusions of the observer, the director of the Bureau,

(1) if of the opinion that the independent investigation was conducted impartially, shall so inform the Minister and the director of the police force that conducted the investigation, who shall in that case send the investigation report to the Director of Criminal and Penal Prosecutions and, if warranted, to the coroner;

(2) if of the opinion that the independent investigation is affected by an irregularity that may compromise its impartiality, shall notify the Minister. In such a case, the Minister shall designate another police force to conduct a new investigation and shall notify the director of the Bureau in accordance with section 289.14.

When the report concerning the new independent investigation is sent to the Director of Criminal and Penal Prosecutions, the director of the Bureau shall send the latter the notice sent to the Minister regarding the previous investigation.

After notifying the Minister, the director of the Bureau shall in all cases make public the assessment of the Bureau as to the impartiality or lack of impartiality of an independent investigation.

“§3.—Immunity and confidentiality

“289.23. No judicial proceedings may be brought against the director, the assistant director or the members of the personnel of the Bureau for an act or omission in good faith in the exercise of their functions.

“289.24. Except on a question of jurisdiction, no recourse under article 33 of the Code of Civil Procedure (chapter C-25) or extraordinary recourse within the meaning of that Code may be exercised nor any injunction granted against the director, the assistant director or the members of the personnel of the Bureau, in the exercise of their functions under this Act.

A judge of the Court of Appeal may, on a motion, summarily annul any decision rendered or any order or injunction issued or granted contrary to the first paragraph.

“289.25. Despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the right of access under sections 9, 83 and 94 of that Act does not apply to any information or document obtained or produced for the purposes of this chapter.

Subject to the third paragraph of section 289.22, no person may use any such information or document otherwise than for the purposes of the law, confirm its existence, communicate it or allow its communication to a person not legally entitled to it, or allow such a person to inspect or have access to it.

“289.26. No person acting or having acted as director, assistant director or member of the personnel of the Bureau may be compelled to testify about

or produce any information or document obtained or produced for the purposes of this chapter, except if necessary to ensure the right to a full and complete defence or in a criminal trial, a coroner's inquest, an investigation by a fire investigation commissioner, the Police Ethics Commissioner or the Comité de déontologie policière or an inquiry by an inquiry commission established by the Government.

Any testimony or production of documents referred to in the first paragraph may be made subject to an in-camera, non-publication, non-disclosure or non-release order.

“289.27. For the purposes of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Bureau is deemed to be a police force and a body responsible by law for the prevention, detection or repression of crime or statutory offences.

“§4. — *Financial provisions and report*

“289.28. The fiscal year of the Bureau ends on 31 March.

“289.29. Each year, the director of the Bureau shall submit budgetary estimates for the following fiscal year to the Minister, in accordance with the form and content and the schedule determined by the Minister.

“289.30. Not later than 31 July each year, the Bureau shall submit an annual management report to the Minister, who shall table it in the National Assembly within 30 days after receiving it or, if the Assembly is not sitting, within 15 days after resumption.

The report must state the results of the Bureau's verification of whether the directives issued by the Minister in accordance with section 289.2 have been complied with.”

2. Section 310 of the Act is amended by replacing “and 288” by “, 288 and the second paragraph of section 289.1”.

3. Section 311 of the Act is amended by replacing “294” by “the first paragraph of section 289.19”.

4. The Act is amended by inserting the following section after section 311 :

“311.1. Every person who contravenes the second paragraph of section 289.25 is guilty of an offence and is liable to a fine of \$1,000 to \$10,000.”

FINANCIAL ADMINISTRATION ACT

5. Schedule 1 to the Financial Administration Act (R.S.Q., chapter A-6.001) is amended by inserting the following in alphabetical order:

“Bureau civil de surveillance des enquêtes indépendantes”.

ACT RESPECTING THE DETERMINATION OF THE CAUSES AND CIRCUMSTANCES OF DEATH

6. The Act respecting the determination of the causes and circumstances of death (R.S.Q., chapter R-0.2) is amended by inserting the following section after section 125:

“**125.1.** The coroner may, in accordance with the regulation of the Government under section 168.1, grant financial assistance to members of a victim’s family to cover expenses incurred for legal assistance and representation during a coroner’s inquest following an occurrence that triggered an independent investigation under section 289.1 of the Police Act (chapter P-13.1).”

7. The Act is amended by inserting the following section after section 168:

“**168.1.** The Government may, by regulation, determine the amounts, the eligibility requirements and the terms and conditions of payment of the financial assistance the coroner may grant to members of a victim’s family under section 125.1 to cover expenses incurred for legal assistance and representation during a coroner’s inquest following an occurrence that triggered an independent investigation under section 289.1 of the Police Act (chapter P-13.1). The Government may also, by regulation, specify the meaning it intends to assign to the expression “members of a victim’s family”.”

FINAL PROVISIONS

8. Not later than three years after the beginning of its activities, the Bureau civil de surveillance des enquêtes indépendantes must report to the Minister on the oversight procedure applied to such investigations, and may make recommendations to improve it.

The Minister tables the report in the National Assembly within 30 days after receiving it or, if the Assembly is not sitting, within 15 days of resumption.

9. The provisions of this Act come into force on the date or dates to be set by the Government, except section 1 insofar as it enacts sections 289.1 to 289.13 and 289.28 to 289.30 of the Police Act (R.S.Q., chapter P-13.1) and sections 2 and 5, which come into force on (*insert the date of assent to this Act*).

