



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 79

**An Act to amend certain provisions of
the Professional Code relating to the
disciplinary councils of the professional
orders**

Introduction

**Introduced by
Mr. Jean-Marc Fournier
Minister responsible for the administration of legislation
respecting the professions**

**Québec Official Publisher
2012**

EXPLANATORY NOTES

This bill amends the disciplinary justice system applicable to members of the professional orders. To that end, the Bureau des présidents des conseils de discipline is constituted within the Office des professions du Québec. The Bureau consists of not more than 15 disciplinary council chairs of professional orders, including a senior chair and a deputy senior chair, appointed on a full-time basis by the Government for a term of not more than five years. Part-time chairs may also be appointed.

A selection procedure for disciplinary council chairs is to be established by the Government.

In addition, the Government is to adopt a code of ethics applicable to the chairs and other members of the disciplinary councils.

Furthermore, every year, the senior chair is required to present to the Minister of Justice a plan setting out, among other things, management objectives to ensure the quality and the expeditious nature of the decision-making process.

Lastly, related amendments and transitional provisions are proposed.

LEGISLATION AMENDED BY THIS BILL:

– Professional Code (R.S.Q., chapter C-26).

Bill 79

AN ACT TO AMEND CERTAIN PROVISIONS OF THE PROFESSIONAL CODE RELATING TO THE DISCIPLINARY COUNCILS OF THE PROFESSIONAL ORDERS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Professional Code (R.S.Q., chapter C-26) is amended by replacing the heading of subdivision 1 of Division VII of Chapter IV by the following:

“§1. — *Bureau des présidents des conseils de discipline*

“**115.1.** A bureau of disciplinary council chairs, known as the Bureau des présidents des conseils de discipline, is constituted within the Office.

The Bureau is to consist of not more than 15 disciplinary council chairs, including a senior chair and a deputy senior chair.

“**115.2.** The chairs are appointed by the Government for a fixed term of not more than five years from among the persons declared qualified in accordance with the selection procedure the Government determines by regulation. The chairs exercise their functions on a full-time basis.

If necessary to expedite the business of the Bureau, the Government may also appoint part-time chairs for a fixed term of not more than five years.

The selection procedure does not apply to a chair whose term is renewed.

“**115.3.** Only an advocate who has at least 10 years of practice and possesses relevant legal experience may be the chair of a disciplinary council.

“**115.4.** A senior chair and a deputy senior chair are designated by the Government from among the full-time chairs.

“**115.5.** In particular, the selection procedure for chairs

(1) determines the procedure for running for office;

(2) provides for the establishment of a selection committee to assess the qualifications of candidates and provides an advisory opinion on them; and

(3) determines the selection criteria that the committee is to take into account.

“115.6. The Government shall determine the remuneration, employee benefits and other conditions of employment of the full-time chairs, the senior chair and the deputy senior chair.

The Government shall also determine the fees and allowances of the part-time chairs.

“115.7. The senior chair shall administer and have the general direction of the Bureau. The functions of the senior chair include

(1) promoting the participation of the disciplinary council chairs in the formulation of guiding principles with a view to maintaining a high level of quality and coherence in decisions;

(2) taking measures to promote an expeditious decision-making process;

(3) consulting the professional orders to assess their particular needs;

(4) coordinating and assigning the work of the chairs, who, in that respect, must comply with the senior chair’s orders and directives;

(5) seeing that standards of ethical conduct are observed;

(6) promoting the professional development of the chairs as regards the exercise of their functions; and

(7) periodically evaluating the knowledge and skills of the chairs in the exercise of their functions and their contribution to achieving the objectives set out in this division.

“115.8. Every year, the senior chair shall present to the Minister a plan setting out management objectives to ensure the quality and expeditious nature of the decision-making process and stating the results achieved in the preceding year.

In addition to the information requested by the Minister, the plan must include the following information, that the senior chair compiles for each disciplinary council on a monthly basis:

(1) the number of days on which hearings were held and the average number of hours devoted to them;

(2) the number of postponements granted;

(3) the nature of the complaints for which a management conference was held, and the number of such complaints;

(4) the number of complaints and requests heard, their nature and the places and dates of the hearings;

(5) the number of complaints and requests taken under advisement, their nature and the time devoted to advisement;

(6) the number of decisions made; and

(7) the time devoted to the proceedings, from the date of receipt of the complaint or request until the beginning of the hearing or the making of the decision.

“115.9. The senior chair may make recommendations to the Minister to improve the decision-making process.

“115.10. The deputy senior chair shall exercise the functions of the senior chair if the latter is absent or unable to act.

“§1.1.—Disciplinary councils”.

2. Section 116 of the Code is amended by inserting “, the senior chair, the deputy senior chair” after “syndic” in the fourth paragraph.

3. Section 117 of the Code is replaced by the following sections:

“117. The disciplinary council shall consist of at least three members, including a chair.

The members other than the chair are appointed by the board of directors of the order from among the members of the order. The board of directors shall set the duration of their term, which must be at least three years.

“117.1. The Government shall set the travel and lodging expenses of the disciplinary council members appointed by the board of directors of the order. The expenses are borne by the order.

“117.2. The Government, after consultation with the Bureau, the Québec Interprofessional Council and the Barreau du Québec, shall adopt a code of ethics applicable to members of disciplinary councils.

“117.3. The code of ethics sets out the rules of conduct of disciplinary council members and their duties towards the public, the parties, the parties’ witnesses and the persons representing the parties. It defines, in particular, conduct that is derogatory to the honour, dignity or integrity of a member of a disciplinary council. In addition, the code of ethics may determine the activities or situations that are incompatible with the office held by members of a disciplinary council, the obligations of those members concerning the disclosure of interests, and the functions the members may exercise free of charge.

The code may include special rules governing part-time chairs and disciplinary council members other than the chair.

“117.4. Once appointed, a part-time chair may not act as the attorney of a party in disciplinary proceedings governed by this Code or by a body exercising similar functions for the protection of the public.”

4. Sections 118 and 118.1 of the Code are repealed.

5. Section 118.3 of the Code is replaced by the following section:

“118.3. The members of the disciplinary council may, with the authorization of the senior chair in the case of a chair, continue to hear a complaint they had begun to hear and render a decision regarding the complaint.

Where a chair continues to hear a complaint pursuant to the first paragraph, the decision on a conviction and, if applicable, the decision on a penalty, must be rendered within six months after the time the chair is replaced. Failure to observe that time limit shall not cause the matter to be withdrawn from the former chair.

However, the senior chair may, at the request of one of the parties, extend the time limit on specified conditions or remove the matter from the former chair if the decision is not rendered within the time allowed. The senior chair must take the circumstances and the interest of the parties into account.

The request must be filed with the secretary of the disciplinary council concerned, who must send a copy to the senior chair as soon as possible. It must be served in accordance with the Code of Civil Procedure (chapter C-25) on the council members who are seized of the complaint.

Where a chair is no longer seized of a complaint, a new division is formed without delay to hear it.

The senior chair may not hear a complaint with respect to which that chair has rendered a decision under this section.”

6. Section 119 of the Code is amended

(1) by striking out “or the substitute chair” in the second paragraph;

(2) by striking out “or substitute chair of a council” in the third paragraph.

7. The Code is amended by inserting the following heading before section 121:

“§1.2. — *Syndics*”.

8. The Code is amended by inserting the following heading after section 123.2:

“§1.3. — *Review committees*”.

9. Section 125 of the Code is repealed.

10. Section 126 of the Code is amended by adding “, who must send a copy to the senior chair as soon as possible” at the end of the first paragraph.

11. Section 131 of the Code is amended by striking out “or the substitute chair” at the end.

12. Section 133 of the Code is amended by inserting the following sentence after the first sentence of the first paragraph: “The secretary must send copies of the request and the notice to the senior chair as soon as possible.”

13. Section 138 of the Code is replaced by the following section:

“138. There shall be three members at the sittings of a disciplinary council, including the chair designated by the senior chair. In assigning work to the chairs, the senior chair may take into account their specific knowledge and experience, the number of complaints referred to them and the special needs of certain professional orders.

If the disciplinary council consists of more than three members, the secretary of the council shall, without delay, choose from among the council members the other two members who, with the chair, are to be responsible for the proceeding.”

14. Section 139 of the Code is amended by replacing the first paragraph by the following paragraph:

“139. The senior chair, in collaboration with the secretary of the disciplinary council, must make sure that the hearing begins within a reasonable time. Barring particular circumstances, the hearing must begin within 90 days after service of the complaint.”

15. Sections 143.1 to 143.4, 151 and 154 of the Code are amended by striking out all occurrences of “or substitute chair”.

16. Section 184.3 of the Code is replaced by the following section:

“184.3. The Office may, by regulation and after consultation with the Bureau, the Québec Interprofessional Council and the Barreau du Québec, adopt rules of practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils.”

17. Section 193 of the Code is amended by inserting “the senior chair, the deputy senior chair,” at the beginning of paragraph 4.

18. Section 197 of the Code is amended by inserting “of Division VII of Chapter IV and” after “with the application” in the second paragraph.

TRANSITIONAL AND FINAL PROVISIONS

19. The term of the disciplinary council chairs of professional orders in office on *(insert the date preceding the date of coming into force of this section)* ends on *(insert the date of coming into force of this section)*.

A chair may, however, on the same conditions, with the authorization of and for the time determined by the senior chair designated in accordance with section 115.4 of the Professional Code (R.S.Q., chapter C-26), as enacted by section 1, continue in office to conclude cases the chair has begun to hear but has not yet decided.

If a disciplinary council does not render a decision within the time determined under the second paragraph, the senior chair may, by virtue of office or at the request of a party, extend the time limit on the same conditions or remove the chair from the case. Before extending the time limit or removing a chair, the senior chair must take the circumstances and the interest of the parties into account.

If the chair is removed from the case, the senior chair designates a new chair and the disciplinary council may, with the authorization of the parties, continue the proceeding and rely on the notes and minutes of the hearing or, if applicable, on the stenographer's notes or the recording of the hearing. However, authorization is not required when a new chair is designated to begin the penalty hearing.

20. The provisions of this Act come into force on the date or dates to be set by the Government, except section 1 to the extent that it concerns section 115.2 of the Professional Code and to the extent that that section refers to the selection procedure for chairs, and sections 115.3 and 115.5 of the Code, which come into force on *(insert the date of assent to this Act)*.