



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 17

**An Act to amend the Professional Code
with respect to disciplinary justice**

Introduction

**Introduced by
Mr. Bertrand St-Arnaud
Minister of Justice and Minister responsible for the
administration of legislation respecting the professions**

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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. The Government must also adopt a code of ethics applicable to the chairs and other members of the disciplinary councils.

Several complaints may be heard by the same disciplinary council and a syndic's oath of discretion does not act to prevent the exchange of information or documents between the syndics of different professional orders.

The rules governing the replacement of the disciplinary council chair seized of a complaint are made clearer and more complete.

In addition, 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.

Moreover, a professional's participation, in the practice of his profession, in an act involving collusion, corruption, malfeasance, breach of trust, influence peddling or fraud is defined as an act derogatory to the dignity of the profession.

Lastly, related and transitional provisions are introduced.

LEGISLATION AMENDED BY THIS BILL:

– Professional Code (chapter C-26).

Bill 17

AN ACT TO AMEND THE PROFESSIONAL CODE WITH RESPECT TO DISCIPLINARY JUSTICE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Professional Code (chapter C-26) is amended by inserting the following section after section 59.1:

“**59.1.1.** The following acts engaged in by a professional in the practice of his profession also constitute acts derogatory to the dignity of that profession:

(1) committing an act involving collusion, corruption, malfeasance, breach of trust, influence peddling or fraud;

(2) attempting to commit such an act or counselling another person to do so; and

(3) conspiring to commit such an act.”

2. The Code 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. The selection procedure for chairs

- (1) sets out the procedure for running for office;
- (2) provides for the establishment of a selection committee to assess the qualifications of candidates and provide an advisory opinion on them; and
- (3) identifies the selection criteria that the committee is to take into account.

The members of a selection committee are not remunerated, except in the cases, on the conditions and to the extent determined by the Government. However, they are entitled to the reimbursement of any expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

“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 is responsible for the administration and overall management of the Bureau. The functions of the senior chair include

- (1) fostering 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 the skills of the chairs in the exercise of their functions, and their contribution to achieving the objectives set out in this division.

“115.8. Complaints whose subject-matters could suitably be combined, whether or not the same parties are involved, may be joined by order of the senior chair or of a person designated by the senior chair, on the conditions fixed by the latter.

An order made under the first paragraph may be revoked by the chair designated to hear the complaints if, at the time of the proceeding, the chair believes that the interests of justice will be better served as a result.

“115.9. 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, which 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 nature of the complaints and requests heard, their number and the places and dates of the hearings;

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

(6) the number of decisions rendered; 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.

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

“115.11. 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*”.

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

4. 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 order’s members. The board of directors shall fix the duration of their term, which must be at least three years. Where a member is absent or unable to act, the board of directors may appoint another person to replace that member for as long as the member is absent or unable to act.

“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 consulting with the Bureau, the Québec Interprofessional Council and the Barreau du Québec, shall establish, by regulation, a code of ethics applicable to members of the 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 the 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 of ethics 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.”

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

6. Section 118.3 of the Code is replaced by the following sections:

“118.3. Where a member is unable to continue with a hearing after being absent or unable to act, whether it be the conviction hearing or the penalty hearing, the two remaining members, provided one is the chair, may validly proceed with the hearing and render a decision on the conviction or the penalty.

Where a member is replaced, the two remaining members, provided one is the chair, may proceed with the hearing and validly render a decision on the conviction and the penalty.

“118.4. A member who has been replaced may continue to hear a complaint that had not yet been decided at the time of the replacement, no matter what stage of the hearing had been reached. A chair may continue to hear a complaint only with the authorization of the senior chair and for the length of time determined by the senior chair.

Where the decision is not rendered within the time determined by the senior chair, the latter may, on the senior chair’s initiative or at the request of one of the parties, extend the time limit on specified conditions or withdraw the matter from the chair. The request must be filed with the secretary of the disciplinary council concerned. It must be served in accordance with the Code of Civil Procedure (chapter C-25) on the senior chair and the council members who are seized of the complaint. Before extending the time limit or withdrawing the matter from the chair, the senior chair must take the circumstances and the interest of the parties into account.

“118.5. Where a matter is withdrawn from the chair, where the chair is absent or unable to act, or where the chair’s term of office has expired and the chair decides not to proceed with a hearing, the senior chair must designate a new chair without delay to hear the complaint, no matter what stage of the hearing has been reached.

Where a new chair is designated before the decision on the conviction is rendered, the disciplinary council may, with the consent of the parties, continue the proceeding and rely on the notes and minutes of the hearing or on the stenographer’s notes or the recording of the hearing, if any.

Where the chair is designated after the decision on the conviction is rendered, the disciplinary council continues the proceeding at the stage of the penalty hearing. The penalty hearing is governed by the same rules for evidence already filed as those set out in the second paragraph.”

7. Section 119 of the Code is replaced by the following sections:

“119. A chair of a council who is appointed to a court or body in which no concurrent functions may be exercised shall retain jurisdiction and may continue, without remuneration, to exercise the functions of office within the council to conclude the cases the chair had begun to hear at the time of the appointment.

However, if the appointment is made after the council has handed down the conviction and the person appointed does not take advantage of the first paragraph, the senior chair designates another chair without delay so that the proceeding may continue at the stage of the penalty hearing. The council hears the parties and imposes the penalty within 90 days following continuance of suit. The hearing continues under the same rules for evidence already filed as those set out in the second paragraph of section 118.5.

“119.1. Interlocutory decisions rendered before continuance of suit remain valid.”

8. Section 120 of the Act is amended by replacing the second paragraph by the following paragraph:

“Where the secretary is absent or unable to act, the board of directors appoints a replacement for as long as the secretary is absent or unable to act.”

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

“§1.2. — *Syndics*”.

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

“§1.3. — *Review committees*”.

11. Section 124 of the Code is amended by adding the following sentence at the end: “Nor shall the oath be construed as prohibiting the sharing of useful information or documents between the syndics of different professional orders for the protection of the public.”

12. Section 125 of the Code is repealed.

13. 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.

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

15. Section 133 of the Code is amended by replacing “The request for provisional striking off the roll or immediate provisional restriction of the right to engage in professional activities” in the first paragraph by “The secretary of the disciplinary council must send a copy of the request for provisional striking off the roll or immediate provisional restriction of the right to engage in professional activities to the senior chair as soon as possible. The request”.

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

“138. There are 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.

The secretary of the disciplinary council shall, without delay, choose from among the council members appointed by the board of directors the other two members who, with the chair, are to be responsible for the proceeding.”

17. 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.”

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

19. Section 149.1 of the Code is replaced by the following section:

“**149.1.** A syndic may, by way of a complaint, seize the disciplinary council

(1) of any decision of a Canadian court finding a professional guilty of a criminal offence,

(2) of any decision made in Québec finding a professional guilty of an offence under section 188 or of an offence under a provision of a Québec or a federal Act, or

(3) of any decision made outside Québec finding a professional guilty of an offence which, if committed in Québec, could have resulted in penal proceedings under section 188 or penal proceedings under a provision of a Québec or a federal Act.

The decision referred to in the first paragraph must, in the opinion of the syndic, be related to the practice of the profession.

A certified copy of the judicial decision is proof before the disciplinary council that the offence was committed and that any facts reported in the decision are true. The disciplinary council then imposes on the professional, where expedient, one of the sanctions prescribed by section 156.”

20. Section 151 of the Code is amended

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

(2) by replacing “referred to in section 138” in the fourth paragraph by “appointed by the board of directors of the order”.

21. Section 164 of the Code is amended

(1) by replacing subparagraph 2 of the first paragraph by the following subparagraphs:

“(2) any other decision of the disciplinary council or its chair, with the leave of the tribunal;

“(3) a decision of the senior chair ordering that a number of complaints be joined under section 115.8, with the leave of the tribunal; and

“(4) a decision of the senior chair, rendered under the last paragraph of section 118.4, to extend a time limit or withdraw a matter from a chair, with the leave of the tribunal.”;

(2) by replacing “in subparagraph 2” in the third paragraph by “in subparagraphs 2, 3 and 4”.

22. 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.”

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

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

TRANSITIONAL AND FINAL PROVISIONS

25. The term of the disciplinary council chairs of professional orders, the substitute chairs and the replacement chair 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 (chapter C-26), as enacted by section 2, 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, on the senior chair’s initiative or at the request of one of the parties, 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. Where the new chair is designated before the decision on the conviction has been rendered, the disciplinary council may, with the consent of the parties,

continue the proceeding and rely for the evidence already filed on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing, if any.

Where the chair is designated after the decision on the conviction is rendered, the disciplinary council continues the proceeding at the stage of the penalty hearing. The penalty hearing is governed by the same rules for evidence already filed as those set out in the fourth paragraph.

26. A person who, on (*insert the date preceding the date of coming into force of this section*), was continuing to hear a complaint under section 118.3 of the Professional Code or the third paragraph of section 119 of that Code may, on the same conditions, with the authorization of the senior chair and for the period the senior chair determines, continue to hear the complaint and render a decision.

The third, fourth and fifth paragraphs of section 25 apply, with the necessary modifications, in such a case.

27. The provisions of this Act come into force on the date or dates to be set by the Government, except section 2 to the extent that it concerns section 115.2 of the Professional Code, insofar as 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*).

