NATIONAL ASSEMBLY

FIRST SESSION THIRTY-SEVENTH LEGISLATURE

Bill 50

An Act to amend the Courts of Justice Act and other legislative provisions as regards the status of justices of the peace

Introduction

Introduced by
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Minister of Justice

Québec Official Publisher
2004

EXPLANATORY NOTES

This bill amends mainly the Courts of Justice Act as regards justices of the peace. It makes a distinction between two types of justices of the peace, presiding and administrative justices of the peace, and sets out classes for the latter based on the scope of the powers they may exercise.

Administrative justices of the peace are appointed to hold office during pleasure by the Minister of Justice, who determines the class to which they are assigned. They exercise their functions either within the Superior Court and the Court of Québec or within a municipal court.

Presiding justices of the peace form part of the judicial system and are therefore appointed by the Government to hold office during good behaviour. They are under the authority of the chief judge of the Court of Québec and are subject to the competence of the Conseil de la magistrature with respect to observance of the code of ethics. The bill contains provisions to ensure their financial security as concerns salary, conditions of employment, employment benefits and pension plan. As of 2007, the committee on the remuneration of judges will determine their total remuneration.

Lastly, the bill requires all justices of the peace to take an oath to exercise their functions impartially and honestly.

LEGISLATION AMENDED BY THIS BILL:

– Act respecting municipal courts (R.S.Q., chapter C-72.01);

– Territorial Division Act (R.S.Q., chapter D-11);

– Interpretation Act (R.S.Q., chapter I-16);

– Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);

– Courts of Justice Act (R.S.Q., chapter T-16).

Bill 50

AN ACT TO AMEND THE COURTS OF JUSTICE ACT AND OTHER LEGISLATIVE PROVISIONS AS REGARDS THE STATUS OF JUSTICES OF THE PEACE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Part III.1 of the Courts of Justice Act (R.S.Q., chapter T-16) is replaced by the following Part:

"**PART III.1**

"JUSTICES OF THE PEACE

"**DIVISION I**

"ADMINISTRATIVE JUSTICES OF THE PEACE

"**158.** Administrative justices of the peace are appointed by the Minister of Justice, by order.

The ministerial order confers on such justices of the peace jurisdiction over the whole territory of Québec or over the judicial districts or the territories indicated.

Administrative justices of the peace shall exercise their functions within the Superior Court and the Court of Québec or within a municipal court, as indicated in the order.

"**159.** Administrative justices of the peace shall exercise their functions during pleasure.

"**160.** Administrative justices of the peace shall exercise only the powers and functions determined in Schedule IV for the class assigned to them in their notice of appointment.

"**DIVISION II**

"PRESIDING JUSTICES OF THE PEACE

"**161.** Presiding justices of the peace are appointed by the Government, by a commission under the Great Seal. They shall hold office during good behaviour.

The notice of appointment shall determine their place of residence.

"**162.** Presiding justices of the peace are appointed from among advocates having at least ten years' practice.

The years during which a person acquired pertinent legal experience after obtaining a diploma of admission to the Barreau du Québec or a certificate of competence to practise the profession of advocate in Québec may be considered.

"**163.** Presiding justices of the peace are chosen from among the persons declared apt for appointment according to the recruitment and selection procedure established by government regulation. The regulation may, in particular,

(1) determine the publicity that must be given to the recruiting procedure and the content of such publicity;

(2) determine the procedure by which a person may become a candidate;

(3) provide for the establishment of selection committees by the Minister of Justice to assess the aptitude of candidates and formulate an opinion concerning them;

(4) determine the composition of the committees, the mode of appointment of their members and their mode of operation;

(5) determine the selection criteria to be considered by the committees;

(6) determine the information that the committees may require from candidates and the verifications and consultations they may make;

(7) determine the period for which a declaration of aptitude is valid.

"**164.** Members of a selection committee are not entitled to remuneration, except in such cases, under such conditions and to such extent as may be determined by the Government.

Expenses incurred in the exercise of their functions shall be reimbursed, however, subject to the conditions and to the extent determined by the Government.

"**165.** A presiding justice of the peace who reaches 70 years of age shall cease to hold office.

"**166.** A presiding justice of the peace shall cease to hold office before reaching 70 years of age only upon retiring or resigning, or upon being dismissed or relieved from duties in the circumstances referred to in sections 167 and 168.

"**167.** The Government may dismiss a presiding justice of the peace only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice.

"**168.** A presiding justice of the peace who is suffering from permanent physical or mental disability which, in the opinion of the Government, prevents the justice of the peace from effectively performing the duties of the office shall be relieved from duties. Unless the justice of the peace resumes duties under the second paragraph, the justice of the peace is deemed to have ceased to hold office on the day preceding the day on which the justice of the peace satisfies the requirements for eligibility for his or her pension.

If the justice of the peace recovers, the Government may permit him or her to resume duties.

Permanent disability is established, at the request of the Minister of Justice, after inquiry by the Conseil de la magistrature. Termination of permanent disability is established in the same manner.

"**169.** Presiding justices of the peace shall exercise their functions within the Court of Québec.

They are under the authority of the chief judge of that court. The chief judge shall coordinate, distribute and supervise the work of presiding justices of the peace, who must comply with the chief judge's orders and directives.

Another function of the chief judge is to ensure that the judicial code of ethics is observed and to promote the professional development of presiding justices of the peace in collaboration with the Conseil de la magistrature.

"**170.** The chief judge may designate any judge of the Court of Québec to assist him or her, to the extent specified, in exercising the functions and powers conferred on the chief judge by this Part.

"**171.** Presiding justices of the peace shall devote their time exclusively to duties of the office.

The office of presiding justice of the peace is incompatible, in particular, with the office of director or manager of a legal person or any other constituted body, or with the conduct, even indirect, of commercial activities.

"**172.** Presiding justices of the peace have jurisdiction throughout Québec, wherever they may be assigned to exercise their functions by the chief judge.

"**173.** Presiding justices of the peace shall exercise only the functions and powers conferred on them by Schedule V.

"**174.** A telephone appearance service consistent with the prescriptions of section 503 of the Criminal Code must be provided without interruption on weekends, holidays and on weekdays outside business hours.

This service shall be provided, in particular, by presiding justices of the peace.

"**175.** The Government shall fix, by order, the salary and conditions of employment of presiding justices of the peace, including their employment benefits other than the pension plan. The order determining the employment benefits other than the pension plan may establish the contribution of presiding justices of the peace.

The order shall also determine the conditions for reimbursement of the expenses incurred by presiding justices of the peace in the carrying out of their duties and the extent to which they are reimbursed.

The order may provide for an annual vacation and leave plan and determine how vacation and leave are allocated.

"**176.** The Government may not make an order under section 175 until the prescriptions of Part VI.4 have been complied with.

"**177.** An order under section 175 comes into force on the date of its publication in the *Gazette officielle du Québec* or any earlier or later date specified in the order.

"**178.** Presiding justices of the peace shall participate in the pension plan established by the Act respecting the Pension Plan of Management Personnel (chapter R-12.1).

This section applies subject to the provisions of Part VI.4.

"**179.** The sums required for the carrying out of section 175 are taken out of the consolidated revenue fund.

"**DIVISION III**

"COMMON PROVISIONS

"**180.** Before taking office, a justice of the peace must make the oath prescribed in Schedule II before a judge of the Court of Québec.

"**181.** The Government may, by regulation, amend Schedules IV and V to modify, add to or reduce the functions and powers of presiding or administrative justices of the peace.

Despite sections 11 and 17 of the Regulations Act (chapter R-18.1), the regulation may be made after the expiry of 15 days from the publication of the draft regulation in the *Gazette officielle du Québec* and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation.

"**182.** The clerk of the Court of Québec is *ex officio* the clerk of the justices of the peace who exercise their functions within that court and each of the clerk's deputies is competent to act as such.

In a local municipal territory served by a municipal court, the clerk of the municipal court is *ex officio* the clerk of the justices of the peace and each of the clerk's deputies is competent to act as such.

"**183.** At least twice a year, the chief judge of the Court of Québec shall submit to the Minister of Justice a report of activities for each judicial district established on a monthly basis and including the following information concerning the functions and powers exercised by presiding justices of the peace:

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

(2) the number of cases heard and their nature;

(3) the number of cases taken under advisement, their nature and the time devoted to advisement;

(4) the number of decisions rendered, according to the nature of the cases heard;

(5) the number of applications presented *ex parte* and their nature;

(6) case processing times;

(7) any other statistical information required by regulation of the Government."

2. The heading of Part VI.4 of the said Act is amended by replacing "THE JUDGES OF THE COURT OF QUÉBEC AND THE MUNICIPAL COURTS" by "JUDGES AND JUSTICES OF THE PEACE".

3. Section 246.29 of the said Act is amended

(1) by replacing "the judges of the Court of Québec and the municipal courts" in the first paragraph by "judges and justices of the peace";

(2) by inserting "and presiding justices of the peace" after "Québec" in the third line of the second paragraph;

(3) by inserting “, an association representing presiding justices of the peace” after “du Québec” in the third line of the third paragraph;

(4) by replacing “and” in the fourth line of the third paragraph by “, the presiding justices of the peace and the judges of”.

4. Section 246.30 of the said Act is amended by replacing “and the other panel” in the third line of the second paragraph by “, a second panel with regard to presiding justices of the peace, and a third panel”.

5. Section 246.31 of the said Act is amended

(1) by replacing the first two paragraphs by the following paragraphs:

“**246.31.** The committee shall have five members, appointed by the Government for a three-year term.

The chief judge of the Court of Québec, the Conférence des juges du Québec, the Conférence des juges municipaux du Québec, the association representing presiding justices of the peace, and the Government shall designate, by mutual agreement, the members of the committee including the chair, as well as the members of each panel.”;

(2) by replacing subparagraphs 3 and 4 of the third paragraph by the following subparagraphs:

“(3) one member shall be designated, by mutual agreement, by the chief judge of the Court of Québec and the association representing presiding justices of the peace;

“(4) one member shall be designated by the Government;

“(5) one member, who shall act as the committee chair, shall be designated, by mutual agreement, by the chief judge of the Court of Québec, the Conférence des juges du Québec, the Conférence des juges municipaux du Québec, the association representing presiding justices of the peace, and the Government. Failing agreement, the Government shall designate the committee chair after consultation with the chief judge of the Court of Québec, the Conférence des juges du Québec, the Conférence des juges municipaux du Québec and the association representing presiding justices of the peace.”;

(3) by replacing the fourth paragraph by the following paragraph:

“When the members of the committee are designated in accordance with the third paragraph, the panel that exercises the functions of the committee with regard to the judges of the Court of Québec shall be composed of the members designated in accordance with subparagraphs 1, 4 and 5 of that paragraph, the panel that exercises the functions of the committee with regard to the judges of the municipal courts to which the Act respecting municipal

courts (chapter C-72.01) applies shall be composed of the members designated in accordance with subparagraphs 2, 4 and 5 of that paragraph, and the panel that exercises the functions of the committee with regard to presiding justices of the peace shall be composed of the members designated in accordance with subparagraphs 3, 4 and 5 of that paragraph.";

(4) by inserting ", presiding justice of the peace" after "judge" in the first line of the fifth paragraph.

6. Section 246.36 of the said Act is amended by inserting ", the association representing presiding justices of the peace" after "Québec" in the fourth line of the third paragraph.

7. Section 246.42 of the said Act is amended by inserting the following paragraph after the first paragraph:

"The first paragraph applies to presiding justices of the peace."

8. Section 257 of the said Act is amended by adding "and for presiding justices of the peace" at the end.

9. Section 258 of the said Act is amended by inserting "the association representing presiding justices of the peace," before "the Barreau" in the fourth line.

10. Section 260 of the said Act is amended by replacing the second paragraph by the following paragraph:

"The provisions of this chapter applicable to judges also apply to the judges of the municipal courts and to presiding justices of the peace."

11. Section 262 of the said Act is amended

(1) by inserting "or 171" after "129" in the fifth line of the first paragraph;

(2) by adding the following sentence at the end of the second paragraph: "Special provisions for presiding justices of the peace may also be stipulated in the code."

12. Section 268 of the said Act is amended by adding "or the third paragraph of section 168" at the end.

13. The said Act is amended by inserting the following section after section 269.4:

"**269.5.** When it establishes a committee to conduct an inquiry into a complaint made against a presiding justice of the peace, the council must designate at least one person who is a presiding justice of the peace to sit on the committee.

Before taking up committee functions, that person must make the oath contained in Schedule III, before the chief judge or the senior associate chief judge of the Court of Québec.

The person so designated is entitled for the time the person is a member of a committee to no indemnity other than the indemnity a council member who is a judge is entitled to receive under section 250."

14. Section 271 of the said Act is amended by adding "or the third paragraph of section 168" at the end of the first paragraph.

15. Section 279 of the said Act is amended by adding "or section 167" at the end of subparagraph *b* of the first paragraph.

16. Section 280 of the said Act is amended by inserting "or section 167" after "section 95".

17. Schedule II to the said Act is replaced by the following schedule:

"SCHEDULE II

(*Sections 89 and 180*)

Oath

I declare under oath that I will faithfully, impartially and honestly, and to the best of my knowledge and abilities, fulfil all the duties and exercise all the powers of a judge of the Court of Québec (or justice of the peace, as the case may be)."

18. Schedule III to the said Act is amended by replacing "(*Sections 249, 255.1 and 269.2*)" by "(*Sections 249, 255.1, 269.2 and 269.5*)".

19. The said Act is amended by adding the following schedules at the end:

"SCHEDULE IV

(*Sections 160 and 181*)

POWERS AND FUNCTIONS OF ADMINISTRATIVE JUSTICES OF THE PEACE

(1) WITHIN THE COURT OF QUÉBEC AND THE SUPERIOR COURT:

CLASS 1

Under the Code of Penal Procedure and the Criminal Code:

— receiving informations, undertakings and recognizances;

— issuing summons;

— issuing summons or subpoenas to witnesses;

— issuing orders for discharge (section 519(2) of the Criminal Code).

CLASS 2

Under provincial and federal statutes:

— receiving informations, undertakings and recognizances;

— issuing summons;

— authorizing a special method of service (article 24 of the Code of Penal Procedure);

— issuing summons or subpoenas to witnesses;

— adjourning procedures with the consent of the parties;

— presiding at an appearance for the purpose of ordering an interim release not objected to by the prosecutor, on an undertaking or a recognizance, subject to conditions mutually agreed by the parties;

— endorsing arrest warrants and search warrants;

— receiving reports of property seized with or without a warrant, and ordering the detention or return of that property;

— ruling on other uncontested applications pertaining to the disposal of property seized with or without a warrant;

— determining to whom the notice provided for in subsection 5 of section 26 of the Youth Criminal Justice Act must be given;

— authorizing the withdrawal of a count (article 12 of the Code of Penal Procedure);

— declaring prescription interrupted (article 15 of the Code of Penal Procedure);

— issuing an order to validate irregular service (article 29 of the Code of Penal Procedure);

— reducing the minimum time for service of a summons, unless the witness is a minister or a deputy minister of the Government or a judge (article 41 of the Code of Penal Procedure);

— confirming or cancelling appearance notices, promises to appear or recognizances, and issuing a summons if necessary (section 508 of the Criminal Code);

— issuing orders for discharge (section 519(2) of the Criminal Code);

— ordering the detention in custody of an accused charged with an offence listed in section 469 and issuing a warrant for committal (section 515(11) of the Criminal Code).

(2) WITHIN MUNICIPAL COURTS:

CLASS 1

Under provincial and federal statutes:

— receiving informations, undertakings and recognizances;

— issuing summons;

— authorizing a special method of service (article 24 of the Code of Penal Procedure);

— issuing summons or subpoenas to witnesses;

— adjourning procedures with the consent of the parties;

— presiding at an appearance for the purpose of ordering an interim release not objected to by the prosecutor, on an undertaking or a recognizance, subject to conditions mutually agreed by the parties;

— endorsing arrest warrants;

— reducing the minimum time for service of a summons, unless the witness is a minister or a deputy minister of the Government or a judge (article 41 of the Code of Penal Procedure);

— confirming or cancelling appearance notices, promises to appear or recognizances, and issuing a summons if necessary (section 508 of the Criminal Code).

CLASS 2

Under provincial and federal statutes:

— receiving informations, undertakings and recognizances;

— issuing summons;

— authorizing a special method of service (article 24 of the Code of Penal Procedure);

— issuing summons or subpoenas to witnesses;

— adjourning procedures with the consent of the parties;

— presiding at an appearance for the purpose of ordering an interim release not objected to by the prosecutor, on an undertaking or a recognizance, subject to conditions determined mutually agreed by the parties;

— endorsing arrest warrants and search warrants;

— receiving reports of property seized with or without a warrant, and ordering the detention or return of that property;

— ruling on other uncontested applications related to the disposal of property seized with or without a warrant;

— authorizing the withdrawal of a count (article 12 of the Code of Penal Procedure);

— declaring prescription interrupted (article 15 of the Code of Penal Procedure);

— issuing an order to validate irregular service (article 29 of the Code of Penal Procedure);

— reducing the minimum time for service of a summons, unless the witness is a minister or a deputy minister of the Government or a judge (article 41 of the Code of Penal Procedure);

— confirming or cancelling appearance notices, promises to appear or recognizances, and issuing a summons if necessary (section 508 of the Criminal Code).

All classes of administrative justices of the peace also exercise the powers, not otherwise excluded by this schedule, which are incidental or complementary to the powers and functions conferred above.

"SCHEDULE V

(*Sections 173 and 181*)

POWERS AND FUNCTIONS OF PRESIDING JUSTICES OF THE PEACE

1. Principal powers exercised concurrently with the judges of the Court of Québec:

— trying proceedings commenced under Part XXVII of the Criminal Code for offences under federal statutes other than the Criminal Code, the Controlled Drugs and Substances Act and the Food and Drugs Act;

— trying proceedings for offences under Québec statutes and under federal statutes to which the Code of Penal Procedure applies;

— presiding at appearances and ordering the remanding of the accused to custody (sections 503 and 516 of the Criminal Code);

— issuing arrest warrants;

— issuing warrants and other types of authorizations pertaining to searches, seizures, entry and other investigative methods under the Criminal Code and other federal and Québec statutes that are under the jurisdiction of a justice of the peace;

— ruling on contested applications relating to the disposal of property seized with or without a warrant;

— exercising the powers of two justices of the peace for the sole purpose of sections 487.01 (general warrant authorizing an investigative technique that could constitute an unreasonable search) and 487.05 (warrant for the taking of samples for analysis) of the Criminal Code and of section 74 of the Firearms Act (reference of a decision of the chief firearms officer);

— issuing, with the consent of the parties, orders revising the conditions of release required by a peace officer or an officer in charge, as provided for in subsections 2.2 and 2.3 of section 503 of the Criminal Code;

— issuing orders under subsections 3 and 3.1 of section 503 of the Criminal Code;

— ordering an assessment of the mental condition of the accused (sections 672.11 and following of the Criminal Code) with the consent of the parties;

— ordering temporary detention in a place other than a place of detention for young persons in accordance with subsection 3 of section 30 of the Youth Criminal Justice Act;

— issuing a warrant for the arrest of a witness;

— ordering the release or detention of an arrested witness and awarding against the witness the costs arising from failure to appear or to remain in attendance (articles 51 and 92 of the Code of Penal Procedure);

— ordering the payment of security greater than that required by law (article 77 of the Code of Penal Procedure);

— reviewing the exigibility of the security required by a peace officer (article 80 of the Code of Penal Procedure).

2. Incidental powers:

— exercising the functions and powers, not otherwise excluded by this schedule, which are incidental or complementary to the exercise of the principal powers listed in point 1.

3. Suppletory powers:

— exercising the functions and powers conferred on administrative justices of the peace."

AMENDING PROVISIONS

20. Section 30 of the Act respecting municipal courts (R.S.Q., chapter C-72.01) is amended by replacing "section 67" in the fourth line of the first paragraph by "the powers of justices of the peace appointed in accordance with Part III.1 of the Courts of Justice Act (chapter T-16)".

21. Section 67 of the said Act is repealed.

22. Section 15 of the Territorial Division Act (R.S.Q., chapter D-11) is repealed.

23. Section 61 of the Interpretation Act (R.S.Q., chapter I-16) is amended by striking out paragraph 15.

24. Section 3 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing paragraph *e* by the following paragraph:

"(*e*) employment conferring the right to a pension plan established by the Courts of Justice Act (chapter T-16) or the Judges Act (Revised Statutes of Canada, 1985, chapter J-1);".

TRANSITIONAL AND FINAL PROVISIONS

25. Justices of the peace appointed before (*insert the date of coming into force of this section*) in accordance with section 158 of the Courts of Justice Act (R.S.Q., chapter T-16), to whom section 162 of that Act was made applicable by their deed of appointment and who are in office on that date become presiding justices of the peace. They are deemed to have been appointed to hold office during good behaviour in accordance with Division II of Part III.1 of the Courts of Justice Act, as amended by this Act.

Justices of the peace referred to in the first paragraph who were on leave without pay from the public service are, from the date of coming into force of this section, deemed to have resigned from their public service position.

26. Persons who became presiding justices of the peace by virtue of section 25 retain the salary they were receiving before the coming into force of section 25, until that salary is equal to the salary to be determined by the Government pursuant to section 175 of the Courts of Justice Act.

They also retain the employment conditions, including the employment benefits and the pension plan, formerly applicable to them. However, during the six months following the coming into force of section 25, they may elect to become members of the pension plan established under the Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1) by sending a notice to that effect to the Commission administrative des régimes de retraite et d'assurances established under the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10). In that case, and if they were formerly members of the pension plan established under the Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12), section 42 and the first paragraph of section 139 of the Act respecting the Pension Plan of Management Personnel apply, with the necessary modifications.

27. Section 25 does not operate to remove from the jurisdiction of persons who have become presiding justices of the peace the cases pending before them on (*insert the date of coming into force of section 25*).

28. Justices of the peace appointed in accordance with section 158 of the Courts of Justice Act (R.S.Q., chapter T-16) before (*insert the date of coming into force of this section*) to whom section 162 of that Act was not applicable become, on that date, administrative justices of the peace and are deemed to have been appointed in accordance with Division I of Part III.1 of the Courts of Justice Act. They retain their assignments within the Court of Québec, the Superior Court or the municipal court where they exercised their functions, until those assignments are modified.

29. The Government determines, by order, the salary and employment conditions of presiding justices of the peace appointed on or after (*insert the date of coming into force of section 161 of the Courts of Justice Act enacted by section 1*), including their employment benefits other than the pension plan. The order remains applicable until the first order is made under section 175 of the Courts of Justice Act (R.S.Q., chapter T-16) enacted by section 1.

30. Despite sections 2 to 7, the committee on the remuneration of judges will not exercise its functions with regard to presiding justices of the peace until a committee is formed in 2007 with respect to judges of the Court of Québec and municipal courts.

31. Until the coming into force of the first regulation made by the Government pursuant to section 163 of the Courts of Justice Act (R.S.Q., chapter T-16) concerning the recruitment and selection procedure for persons

who are apt for appointment as presiding justices of the peace, the Regulation respecting the procedure for the selection of persons apt for appointment as judges (R.R.Q., 1981, chapter T-16, r.5) applies to the recruitment and selection of presiding justices of the peace.

The Minister of Justice promptly forms the first selection committee. The members of the committee are remunerated in the same cases and manner as the members of the selection committee for judges of the Court of Québec.

32. Presiding justices of the peace remain subject to the judicial code of ethics, approved by Order in Council 643-82 dated 17 March 1982, until the Conseil de la magistrature adopts special provisions for them, if it considers it expedient.

33. Persons who, by virtue of sections 25 and 28, become presiding or administrative justices of the peace must make the oath provided for in Schedule II to the Courts of Justice Act (R.S.Q., chapter T-16) within 30 days after the coming into force of this section.

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