



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 48

**An Act to amend the Act respecting
municipal courts and other legislative
provisions**

Introduction

**Introduced by
Mr. Jacques P. Dupuis
Minister of Justice**

**Québec Official Publisher
2007**

EXPLANATORY NOTES

This bill proposes amendments to the Courts of Justice Act and the Act respecting municipal courts in order to replace the office of associate chief judge of the Court of Québec responsible for municipal courts by the office of chief judge of the municipal courts.

The bill also proposes an amendment under which municipal judges exercising the functions of office on a part-time basis may practise as advocates before the Court of Québec.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting municipal courts (R.S.Q., chapter C-72.01);
- Courts of Justice Act (R.S.Q., chapter T-16);
- Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions (2002, chapter 21).

Bill 48

AN ACT TO AMEND THE ACT RESPECTING MUNICIPAL COURTS AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING MUNICIPAL COURTS

1. Section 24.1 of the Act respecting municipal courts (R.S.Q., chapter C-72.01) is replaced by the following section:

“24.1. Municipal courts and municipal judges are under the authority of the chief judge of the municipal courts, who shall exercise, in respect of municipal judges and municipal courts, the functions of chief judge described in this Act.”

2. The Act is amended by inserting the following sections after section 36:

“36.1. The Government shall appoint the chief judge of the municipal courts from among the municipal judges, by commission under the Great Seal.

“36.2. The term of office of the chief judge is seven years and may not be renewed.

At the expiry of that term, the chief judge shall remain in office until replaced.

“36.3. The chief judge shall continue to exercise the functions of a municipal judge while holding the office of chief judge.

The chief judge shall exercise the functions of office at the court to which the chief judge is assigned in a deed of appointment as a municipal judge, if so agreed by the Government and the municipality responsible for the administration of that court. Failing agreement, the chief judge shall exercise the functions of office at the place determined by the Government.

If the municipal court to which the chief judge is assigned is abolished, the chief judge shall continue to exercise the functions of office at the place determined by the Government. The chief judge shall retain the status of municipal judge for that purpose.

“36.4. A chief judge appointed from among the judges of a municipal court that is placed under the authority of a president judge or a judge

responsible for the court is given leave from the functions of judge of that court during the term of office as chief judge and shall exercise the functions of office at the place determined by the Government.

The first paragraph does not apply if the chief judge is also president judge or judge responsible for the court.

“36.5. If absent or unable to act, the chief judge may be replaced by another municipal judge appointed by the Government to exercise the functions of chief judge until the chief judge resumes those functions or is replaced.

If absent or unable to act for fewer than 45 days, the chief judge shall designate a judge from among the municipal judges to exercise the functions of chief judge until the chief judge resumes those functions.

“36.6. The chief judge is responsible for the management of the municipal courts. The functions of the chief judge include

(1) establishing, with the municipal judges, general policies applicable to them and ensuring that the policies are adhered to;

(2) seeing that such rules of practice as are necessary for the exercise of the jurisdiction of the municipal courts are adopted and ensuring that the rules are applied;

(3) ensuring that judicial ethics are observed;

(4) promoting the professional development of municipal judges in collaboration with the Conseil de la magistrature established by the Courts of Justice Act (chapter T-16); and

(5) providing support to municipal judges in their efforts to improve the operation of the municipal courts.”

3. Section 37 of the Act is replaced by the following section:

“37. Subject to sections 37.1 and 45.1, the acceptance of the office of municipal judge and the exercise of the functions of that office do not prevent an advocate from practising as an advocate before any court of justice except a municipal court.”

4. The Act is amended by inserting the following section after section 37:

“37.1. The chief judge shall exercise no functions other than those of chief judge and municipal judge. The functions of office are incompatible, in particular, with those of director or manager of a legal person or any other constituted body, or with the conduct, whether direct or indirect, of commercial activities. However, the chief judge may carry out any mandate entrusted to the chief judge by order of the Government.

This section does not apply to a chief judge appointed or designated under section 36.5.”

5. The Act is amended by inserting the following sections after section 49:

“49.1. The Government shall fix, by order, the remuneration of the chief judge of the municipal courts and the additional remuneration attached to the office of chief judge. The remuneration may not be less than that of a judge of a municipal court that is under the authority of a president judge, and the additional remuneration may not be less than the additional remuneration received by an associate chief judge of the Court of Québec.

The Government shall also fix, by order, the additional remuneration to which a judge appointed under the first paragraph of section 36.5 is entitled when replacing a chief judge who is absent or unable to act.

“49.2. The Government shall fix, by order, the pension plan applicable to the chief judge and establish the chief judge’s employment benefits. The Government shall also determine the cases and conditions in and on which it shall reimburse the chief judge for expenses incurred in the exercise of the functions of office and the extent of such reimbursement.

“49.3. The chief judge is not entitled to additional remuneration for exercising other functions under this Act or for the reimbursement of expenses attached to them, except in the case of a mandate entrusted to the chief judge by the Government under section 37.1.

[[**“49.4.** The sums required for carrying out sections 49.1 and 49.2 are taken out of the consolidated revenue fund.]]

Unless the chief judge is given leave from the functions of office of a municipal judge under section 36.4, the municipality responsible for the administration of the municipal court in which the chief judge exercises the functions of municipal judge shall pay the remuneration to which the chief judge would otherwise be entitled under section 49, as and when the chief judge is entitled to it, into the consolidated revenue fund instead of to the chief judge.”

6. Section 51 of the Act is amended by inserting “, 49.1 or 49.2” after “49”.

7. The Act is amended by inserting the following section after section 86.0.1:

“86.1. Where an agreement has been entered into between the Government and a municipality in accordance with the second paragraph of section 36.3, the administrative support expenses directly related to the functions of chief judge are borne by the municipality and reimbursed to the municipality by the Government to the extent determined in the agreement. Failing an agreement or where the municipal court to which the chief judge is assigned as municipal judge is abolished, such expenses are borne by the Government.”

COURTS OF JUSTICE ACT

8. Section 85 of the Courts of Justice Act (R.S.Q., chapter T-16) is amended by replacing “four” by “three”.

9. The Act is amended by inserting the following section after section 88:

“88.1. A municipal judge who has held office as chief judge of the municipal courts for seven years in accordance with the Act respecting municipal courts (chapter C-72.01) may, following the publication of a notice of vacancy on the Court of Québec or on a municipal court that is under the authority of a president judge, apply for the position. The judge is deemed to be qualified for appointment as a judge of such a court. The qualification is effective until the judge concerned is appointed to such a court.

The Government shall consider any application submitted by that judge for a vacant position on such a court, provided that, following the publication of a notice of vacancy, the judge shows an interest for the position within the time provided in the notice.”

10. Section 90 of the Act is amended

(1) by replacing the comma after “judge” in the third line of the first paragraph by “and”;

(2) by striking out “and an associate chief judge responsible for municipal courts” at the end of the first paragraph.

11. Section 98 of the Act is amended by striking out the third paragraph.

12. Section 101 of the Act is replaced by the following section:

“101. Where an associate chief judge is absent or unable to act, the chief judge shall designate a judge of the division concerned to exercise the functions of the associate chief judge until the associate chief judge resumes those functions or is replaced.”

13. Section 224.1 of the Act is amended by replacing the second paragraph by the following paragraph:

“It also applies to the chief judge of the municipal courts and, to the extent determined by an order under the second paragraph of section 49 or section 49.2 of the Act respecting municipal courts (chapter C-72.01), to judges of municipal courts that are under the authority of a president judge.”

14. Section 225 of the Act is amended by replacing the second paragraph by the following paragraph:

“It also applies to the chief judge of the municipal courts and, to the extent determined by an order under the second paragraph of section 49 or section 49.2 of the Act respecting municipal courts (chapter C-72.01), to judges of municipal courts that are under the authority of a president judge.”

15. Section 246.31 of the Act, amended by section 5 of chapter 12 of the statutes of 2004, is again amended

(1) by inserting “the chief judge of the municipal courts,” after “the Conférence des juges du Québec,” in the second paragraph;

(2) by replacing “of the Court of Québec” in subparagraph 2 of the third paragraph by “of the municipal courts”;

(3) by inserting “the chief judge of the municipal courts,” after “the Conférence des juges du Québec,” in the second and third lines of subparagraph 5 of the third paragraph;

(4) by inserting “the chief judge of the municipal courts,” after “the Conférence des juges du Québec,” in the sixth and seventh lines of subparagraph 5 of the third paragraph.

16. Section 246.36 of the Act, amended by section 6 of chapter 12 of the statutes of 2004, is again amended by inserting “the chief judge of the municipal courts,” after “the Conférence des juges du Québec,” in the third paragraph.

17. Section 246.41 of the Act, amended by section 7 of chapter 12 of the statutes of 2004, is again amended by replacing the first paragraph by the following paragraph:

“246.41. Within the scope of its functions, the committee shall receive observations from the chief judge of the Court of Québec and the Conférence des juges du Québec, from the chief judge of the municipal courts and the Conférence des juges municipaux du Québec or from the chief judge of the Court of Québec and the association representing presiding judges of the peace, depending on which panel is competent, as well as from the Government and, again depending on which panel is competent, from the municipalities responsible for the administration of a municipal court that is under the authority of a president judge or from the bodies representing municipalities, more particularly, the Union des municipalités du Québec and the Fédération québécoise des municipalités locales et régionales.”

18. Section 248 of the Act is amended

(1) by replacing “four” in paragraph *c* by “three”;

(2) by inserting the following paragraph after paragraph *d.1*:

“(d.2) the chief judge of the municipal courts;”.

19. Section 262 of the Act, amended by section 12 of chapter 12 of the statutes of 2004, is again amended by replacing “section 45.1” in the last line of the first paragraph by “sections 37.1 and 45.1”.

OTHER AMENDING PROVISION

20. Section 54 of the Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions (2002, chapter 21), amended by section 31 of chapter 10 of the statutes of 2007, is repealed.

TRANSITIONAL AND FINAL PROVISIONS

21. The term of office of the associate chief judge of the Court of Québec who is responsible for municipal courts ends on (*insert the date of coming into force of this Act*).

On that date, the judge ceases to be a judge of the Court of Québec and becomes a municipal judge of the Municipal Court of Lévis, the judge responsible for that court and the chief judge of the municipal courts. Despite section 36.2 of the Act respecting municipal courts, as enacted by section 2 of this Act, the judge’s term as chief judge of the municipal courts and judge responsible for the municipal court ends on 30 June 2009.

Sections 36.3 and 86.1 of the Act respecting municipal courts, as enacted by sections 2 and 7 of this Act, apply to an agreement concerning the reimbursement to Ville de Lévis of administrative support expenses directly related to the functions of chief judge.

22. The chief judge of the municipal courts to whom section 21 applies is entitled to continue to receive, during the chief judge’s term of office, remuneration equal to the salary and additional remuneration to which the chief judge was entitled as judge and associate chief judge of the Court of Québec. The chief judge continues to participate, during the term of office, in the pension plan established by Part V.1 of the Courts of Justice Act and is entitled, during that period, to reimbursement of the expenses attached to the office of associate chief judge of the Court of Québec and to the employment benefits of judges of the Court of Québec.

However, the chief judge is not entitled to additional remuneration as judge responsible for the municipal court or to reimbursement of the expenses attached to that office.

At the expiry of the term of office as chief judge of the municipal courts and until such time as the judge’s remuneration as municipal judge reaches the amount of the salary and the additional remuneration received at the time the judge ceases to hold the office of chief judge of the municipal courts and judge responsible for the municipal court, the judge is entitled to the difference

between that amount and the judge's remuneration as municipal judge. The judge will no longer be a member, however, of the pension plan or the group insurance plan.

[[The sums required for carrying out this section, except the amount of the remuneration paid to the judge as a municipal judge, are taken out of the consolidated revenue fund.]]

23. At the expiry of the term of office on 30 June 2009, the chief judge of the municipal courts will be deemed, for the purposes of sections 88.1, 92 and 224.9 of the Courts of Justice Act, to have held office as chief judge of the municipal courts or associate chief judge of the Court of Québec, as the case may be, for at least seven years. For the purposes of section 92 of that Act, the chief judge will be entitled to a leave of absence of six months.

24. The chief judge of the municipal courts remains subject to the Judicial Code of Ethics, approved by Order in Council 643-82 dated 17 March 1982, until the coming into force of the provisions of the Code of ethics of municipal judges to be adopted by the Conseil de la magistrature in respect of municipal judges exercising their functions on an exclusive basis.

25. This Act comes into force on (*insert the date of assent to this Act*).

