



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FIFTH LEGISLATURE

Bill 191

An Act respecting the protection of the rights of the elderly

Introduction

**Introduced by
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EXPLANATORY NOTES

This bill establishes the Commission de protection des droits des aînés whose objects are to ensure the rights of elderly persons are respected and to protect the elderly against all physical or psychological violence and against financial exploitation.

To those ends, the Commission will identify the needs of the elderly, develop plans of action and implement strategies for intervention. It may also investigate any situation where it has reason to believe that the rights of an elderly person have been infringed by persons, institutions or organizations, and take the legal means it considers necessary to remedy the situation. Lastly, the Commission may collaborate in preparing and publicizing information programs intended to inform the elderly of their rights, conduct studies or direct that studies be conducted on any matter pertaining to the rights of the elderly, and make recommendations to the appropriate ministers of the Government.

The bill sets out the Commission's operating terms and conditions and in particular, provides that the Commission determines the admissibility of information brought to its attention to the effect that the physical, psychological or financial security of an elderly person is in danger.

Lastly, the bill describes the various manners in which the Commission and the courts may intervene to remedy situations in which the security of an elderly person is in danger.

Bill 191

An Act respecting the protection of the rights of the elderly

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

COMMISSION DE PROTECTION DES DROITS DES AÎNÉS

DIVISION I

ESTABLISHMENT AND JURISDICTION

1. A commission to be called the “Commission de protection des droits des aînés” is hereby established.

2. The objects of the Commission are to ensure the rights of the elderly are respected and to protect the elderly against all physical or psychological violence and against financial exploitation.

3. In exercising its functions, the Commission

(a) shall identify the needs of the elderly, prepare action plans and implement strategies for intervention;

(b) shall, following a request made orally or in writing, or of its own motion, investigate any situation where it has reason to believe that the rights of an elderly person have been infringed by persons, institutions or bodies, unless a court has already been seized of the matter;

(c) shall take the legal means it considers necessary to remedy any situation in which an elderly person’s rights have been infringed;

(d) shall collaborate in the preparing and publicizing of information programs intended to inform the elderly of their rights;

(e) may, for any matter relating to the rights of the elderly, conduct studies or direct that studies be conducted and make recommendations to the Minister of Health and Social Services, the Minister of Public Security, the Minister of Justice or the Minister of Income Security.

DIVISION II

OPERATION

4. The Commission is a legal person.

5. The head office of the Commission shall be situated in the territory of the Communauté urbaine de Québec, at the location determined by the Government. Notice of the location of the head office of the Commission, and of any change of location, shall be published in the *Gazette officielle du Québec*.

The Commission may set up offices at any other place in Québec.

6. The Commission is a mandatary of the Government.

The property of the Commission forms part of the domain of the State, but the performance of its obligations may be levied against its property.

The Commission binds none but itself when it acts in its own name.

7. The Commission shall consist of sixteen members of whom twelve are voting members.

8. The voting members of the Commission shall be chosen for their concern for the elderly and in a manner ensuring the most equitable representation possible of both women and men and of the various age groups of such persons, and representation of the various regions of Québec. Voting members shall be appointed by the Government, on the recommendation of the Minister, following consultation with the most representative bodies involved, for the whole of Québec, in the protection of the rights or the promotion of the interests of the elderly. The members shall include

(1) a chairman;

(2) a vice-chairman;

(3) two persons chosen from among the users of health services and social services;

(4) four persons from bodies involved, for the whole of Québec, in the protection of the rights of the elderly, in the promotion of their interests or in their participation in community life;

(5) four persons from socio-economic groups active, in particular, in the fields of health and social services, municipal affairs, recreation and housing.

The Deputy Minister of Health and Social Services, the Deputy Minister of Public Security, the Deputy Minister of Justice and the Deputy Minister of Income Security, or the persons delegated by them, shall also be members of the Commission, but are not entitled to vote.

9. The chairman and vice-chairman shall be appointed for a maximum term of five years, and the other voting members of the Commission for a maximum term of three years.

At the end of their terms, they shall remain in office until they are reappointed or replaced.

10. Any vacancy occurring during the term of office of a voting member shall be filled in accordance with the method of appointment set out in section 8.

11. The chairman shall be responsible for the administration and general management of the Commission. He shall also act as liaison between the Commission and the Minister.

The vice-chairman shall replace the chairman when the latter is absent or unable to act.

12. The Government shall fix the remuneration, social benefits and other conditions of employment of the chairman and of the vice-chairman.

Subject to the provisions of the first paragraph, the voting members of the Commission receive no remuneration. They are entitled, however, to the reimbursement of expenses incurred in the performance of their duties, on the conditions and to the extent determined by the Government.

13. The Commission may hold its sittings anywhere in Québec.

A majority of the voting members, including the chairman or the vice-chairman, constitutes a quorum at sittings of the Commission.

14. The decisions of the Commission shall be made by a majority vote of the voting members.

In the case of a tie-vote, the chairman of the Commission or, in his absence, the vice-chairman, has a casting vote.

15. The members of the personnel of the Commission shall be appointed and remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

16. No member of the Commission and no person in its employment may be prosecuted for acts done in good faith in the performance of their duties.

17. The Commission may make by-laws for its internal management.

18. The Commission must, not later than 30 June each year, file a report with the Minister on its activities for the preceding year; the report must include the information that may be required by the Minister, provided that the anonymity of persons is preserved.

The Minister shall table the Commission's report before the National Assembly within 30 days of receiving it or, if the Assembly is not sitting, within 30 days of resumption.

CHAPTER II

COMMISSION INTERVENTION

19. The Commission shall have the following exclusive duties:

(a) to determine the admissibility of information brought to its attention to the effect that the physical, psychological or financial security of an elderly person is in danger;

(b) to decide whether or not the security of an elderly person is in danger;

(c) to decide the manner in which an elderly person is to be directed;

(d) to review the situation of an elderly person;

(e) to decide to close the record.

20. For the purposes of this Act, the security of an elderly person is in danger where

(a) his close relations are deceased, no longer take care of him or seek to be rid of him;

(b) his mental or emotional state is threatened by the lack of appropriate care, by the isolation in which he is maintained or by serious and continuous emotional rejection by his close relations;

(c) his physical health is threatened by the lack of appropriate care;

(d) he is deprived of the material conditions of life appropriate to his needs and to the resources of his close relations or of the persons having custody of him;

(e) he is in the custody of a person whose behaviour or way of life creates a risk of moral or physical danger for him;

(f) he is forced or induced to beg, to do work disproportionate to his capacity or to perform for the public in a manner that is unacceptable for his age;

(g) he is the victim of sexual abuse or of ill-treatment through violence or neglect;

(h) he shows serious behavioural disturbances and his close relations fail to take the measures necessary to remedy the situation or the remedial measures taken by them fail;

(i) he is being exploited financially.

21. Any intervention in favour of an elderly person by a member of the Commission or a person in its employment must seek to prevent and remedy situations giving rise to such intervention and to promote the involvement of the community.

22. Decisions made under this Act must be made in the interest of the elderly person and respect his rights.

23. A member of the Commission or a person in its employment must inform the elderly person and his close relations as fully as possible of their rights under this Act, and in particular, of the right to consult an advocate and of the rights of appeal provided for in this Act.

Where a member of the Commission or a person in its employment intervenes under this Act, the elderly person and his close relations must be given a description of the measures that the Commission intends to take and of the steps proposed to terminate the intervention.

24. The persons and courts called upon to make decisions respecting an elderly person under this Act shall give the person and, where applicable, his close relations and any person wishing to intervene in his interest, an opportunity to be heard.

25. A member of the Commission or a person in its employment may, with the written authorization of a justice of the peace, enter premises after identifying himself and producing a certificate of his capacity, if he has reasonable grounds to believe that an elderly person whose security is in danger is to be found on the premises and that it is necessary to enter therein for the purposes of the Commission's investigation.

A justice of the peace may grant the authorization, subject to such conditions as he may specify therein, if he is satisfied on the basis of a sworn statement by the member of the Commission or person in its employment that there are reasonable grounds to believe that an elderly person whose security is in danger is to be found on the premises and that it is necessary to enter therein for the purposes of an investigation. The authorization, whether acted upon or not, shall be returned to the justice of the peace who granted it within 15 days after its issue.

Such authorization is not required, however, if the conditions for obtaining it exist and if, in regard to the urgency of the situation, the delay required to obtain the authorization may result in danger to the security of the elderly person.

26. For the purposes of an investigation, the chairman, vice-chairman or any other member of the Commission designated by the chairman is vested with the powers mentioned in sections 9 to 13 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to impose imprisonment.

27. Any person, including a person bound by professional secrecy, who has reasonable grounds to believe that the security of an elderly person is in danger within the meaning of section 20 must bring the situation to the attention of the Commission without delay.

Every professional who, by the very nature of his profession, provides care or any other form of assistance to an elderly person and who, in the practice of his profession, has reasonable grounds to believe that the security of an elderly person is in danger within the meaning of section 20, must bring the situation to the attention of the Commission without delay. The same obligation is incumbent upon any person who, in the performance of his duties, has reasonable grounds to believe that the security of an elderly person is in danger within the meaning of this provision.

Any person other than a person referred to in the second paragraph who has reasonable grounds to believe that the security of an elderly person is in danger within the meaning of section 20 may bring the situation to the attention of the Commission.

The first and second paragraphs do not apply to an advocate who, in the practice of his profession, is given information concerning a situation described in section 20.

28. Following information brought to its attention to the effect that the security of an elderly person is in danger, the Commission shall determine whether or not urgent measures are required.

29. The Commission may implement the following interim measures:

(a) the immediate removal of the elderly person from his present environment;

(b) the immediate entrusting of the elderly person to an institution operating a reception centre or hospital, to a foster family, to an appropriate body or to any other person;

(c) the taking of appropriate action to ensure the elderly person's assets are preserved.

30. The Commission may require the cessation of the act complained of or the implementation, within the time it fixes, of any remedial measure.

31. The Commission may refer the matter to the court if its recommendation has not been carried out within the fixed time.

32. The Commission shall periodically review the case of every elderly person of whose situation it has taken charge. It shall, where

applicable, satisfy itself that every measure designed to ensure that the elderly person enjoys living conditions appropriate to his needs and his age has been taken.

33. The purpose of the review is to determine whether the Commission shall

(a) maintain the elderly person in the same situation;

(b) propose other measures of assistance for the elderly person or his close relations.

CHAPTER III

JUDICIAL INTERVENTION

DIVISION I

COURT OF QUÉBEC

34. The Court of Québec shall hear the application of an elderly person in the district where the domicile or residence of the person is situated, unless, due to the circumstances, the Court decides that it is advisable to hear the application in another district.

Where the elderly person has no known domicile or residence in Québec, the application is heard in the district in which the information was brought to the Commission's attention.

35. Where the elderly person or his close relations object to the application of an emergency measure, the Commission shall refer the matter to the Court.

36. The Commission may refer to the Court the case of an elderly person whose security is in danger.

The Commission may also refer to the Court any situation where it has reason to believe that the rights of an elderly person have been infringed by persons, institutions or bodies .

37. An elderly person or his close relations may apply to the Court where they disagree with

(a) the decision of the Commission as to whether or not the security of the elderly person is in danger;

(b) the decision of the Commission as to the directing of the elderly person;

(c) the decision to entrust the elderly person to an institution operating a reception centre or hospital centre, to a foster family, to an appropriate body or to any other person;

(d) the decision of the Commission on review.

38. The Court is seized of the matter by the filing of a sworn declaration containing, if possible, the names of the elderly person and of his close relations, their addresses, their ages and a summary of the facts justifying the intervention of the Court.

39. The declaration, accompanied with a notice of the date fixed for proof and hearing, must be served by registered or certified mail, not less than ten days before proof and hearing, on the Commission, on the parties and on their advocates, if any.

The notice need not be sent,

(a) when all of the parties are present before the Court and they waive the notice;

(b) when the Court, in urgent cases, orders a special manner of notifying the parties.

40. The Court may, if it considers it necessary for the security of the elderly person, render any decision for the execution, while proceedings are in progress, of one or more of the measures applicable under sections 29 and 60.

41. The Court must itself hear all the evidence before reaching a decision.

42. The Court must inform the elderly person and his close relations of their right to be represented by an advocate.

43. The Court may, for the application of section 40, order the provisional compulsory foster care of an elderly person in an institution operating a reception centre or hospital centre, or in a foster family if, after an assessment of the situation, the Court concludes that the elderly person's remaining at or returning to his domicile or his place of residence could cause him serious harm.

The Court shall without delay notify the close relations of the elderly person who is the subject of a measure taken under this section.

No provisional compulsory foster care measure may exceed 30 days. However, where justified by the facts, the Court may order a single extension for a period of not over 30 days.

44. Where the Court establishes that the interests of the elderly person are in conflict with those of his close relations, the Court must see that an advocate is specifically assigned to take the defense of the elderly person and that the advocate does not act, at the same time, as counsel or attorney for the elderly person's close relations.

45. The Court shall hear all interested persons and the advocates representing them.

The Commission may, *ex officio*, intervene at the proof and hearing as if it were a party thereto; any other person may intervene therein if it demonstrates to the Court that he is acting in the interests of the elderly person.

46. Notwithstanding section 23 of the Charter of human rights and freedoms (R.S.Q., chapter C-12), the hearings are held *in camera*.

Nevertheless, the Court must at all times admit to its hearings at least one member of the Commission and any other person authorized in writing by the Commission to be present.

47. The Court may exclude the elderly person or any other person from the court-room when the information produced could, in the opinion of the judge, be harmful to the elderly person if it were produced in the presence of the elderly person or such other person. The advocate of the elderly person must, however, remain in the court-room to represent him. If the elderly person has no advocate, the Court shall appoint one to him *ex officio*.

The advocate of any other person excluded from the court-room may remain in the court-room to represent him.

48. Articles 2, 14 to 20, 46, 49 to 54, 279 to 300 and 302 to 331 of the Code of Civil Procedure (R.S.Q., chapter C-25) apply before the Court to the extent that they are not inconsistent with the provisions of this Act.

49. Any elderly person is competent to testify under oath unless, because of his physical or mental condition, he is not in a fit state to report the facts known to him. The same applies to any elderly person who, in the opinion of the Court, understands the meaning of an oath.

50. Any elderly person who, in the opinion of the Court, does not understand the meaning of an oath may be permitted to testify without that formality if the Court is of the opinion that he is able to report the facts known to him and understands that he has the duty to tell the truth.

51. Any elderly person who is competent to testify may be compelled to do so.

However, the Court may, by way of exception, dispense an elderly person from testifying if it believes that testifying could be harmful to the elderly person.

52. The Court may, by way of exception and if it believes that it is warranted in the circumstances, hear an elderly person outside the presence of any person who is a party to the proceedings.

However, the advocate of any person excluded from the court-room may remain in the court-room to represent his client.

Any person in the absence of whom testimony is given may have access to it. The Court may, however, make any decision which appears necessary to ensure that the confidential nature of such testimony is respected.

53. Where an elderly person is not competent to testify or has been dispensed therefrom by the Court, his earlier declaration is admissible as evidence of the existence of the facts alleged therein.

However, the Court shall not rule that the security of the elderly person is in danger on the strength of the declaration unless it is corroborated, to the satisfaction of the Court, by other evidence confirming its reliability.

54. The declaration referred to in section 53 may be proved by the deposition of the persons having witnessed it.

Where the declaration is recorded on magnetic tape or by any other reliable means, it may also be proved by that means provided the authenticity of the recording is established separately.

55. Before rendering a decision on the measures applicable, the Court shall request the Commission to make a study of the social situation of the elderly person.

The Commission may, at its discretion, or must, if the Court so requires, attach to the study a psychological or medical assessment of the elderly person and of his close relations or any other expert examination report that may be useful.

56. The elderly person or his close relations may refuse to submit to a study, an assessment or any other expert opinion referred to in section 55. In the case of refusal, the study, assessment or expert examination shall not take place and the refusal shall be recorded in a report filed with the Court. When the elderly person consents to submit to such a study, assessment or expert examination, it shall take place although the close relations refuse to submit to it; in such a case, the refusal by the close relations shall be recorded in a report filed with the Court.

However, the elderly person and his close relations may not refuse to submit to such study, assessment or expert examination when it is required with regard to a situation described in paragraph *g* of section 20.

57. The contents of a study, assessment or expert examination report referred to in section 55 must be sent to the parties, who may dispute the data or the conclusions contained in the study, assessment or expert examination report.

However, where the author of the study, assessment or expert examination report believes that the contents or part of the contents should not be communicated to the elderly person, the judge may, by exception, prohibit the transmission of it. The judge must then satisfy himself that the elderly person is represented by an advocate who may examine the study, assessment or expert examination report and dispute it.

Where the study, assessment or expert examination report is disputed, the Court may require the Commission to obtain a second study, assessment or expert examination.

58. The judge must explain to the elderly person the nature of the measures envisaged and the reasons justifying them; he must endeavour to obtain the consent of the elderly person to such measures.

59. A decision of the Court must be rendered in writing, stating the reasons therefor.

60. Where the Court concludes that the security of the elderly person is in danger, it may, for such period as it may determine, order the execution of one or more of the measures listed in section 29. It may, in addition,

(a) order a person to ensure that the elderly person and his close relations comply with the conditions imposed upon them and to report periodically to the Commission;

(b) recommend that measures be taken to have a tutor appointed to the elderly person;

(c) make any other recommendation that it considers to be in the interests of the elderly person.

Where the Court concludes that the rights of an elderly person have been infringed by persons, institutions or bodies, it may order that the situation be remedied.

61. Where the Court orders the implementation of a measure with regard to an elderly person, it shall entrust the situation of the elderly person to the Commission, which shall then see that the measure is implemented.

62. Every decision of the Court is executory as soon as it is rendered and any person to whom it applies must comply therewith without delay.

63. A copy of a decision of the Court relating to a matter concerning an elderly person shall be sent without delay to the Commission, the elderly person's close relations, the elderly person and the advocates of the parties.

The original shall be filed in the record of the Court and shall be kept by the clerk.

64. The elderly person and any party to the proceedings may apply to the Court for the review of a decision when new facts have arisen since it was rendered.

65. An application for review is presented to the judge who pronounced the original judgment. If the judge is absent or unable to act, the application is presented to another judge of the Court.

If the elderly person no longer lives in the district where the decision was rendered, the application may be brought before the Court of his domicile or residence.

66. Where the original decision and the decision granting an application for review or extension are rendered in different districts, the clerk of the district in which the decision for review or extension is rendered shall send a copy thereof to the clerk of the other district so that he may add it to the record.

67. A record of the Court is confidential. No person may have access to it or receive a copy or duplicate of it except

- (a) the elderly person;
- (b) the close relations of the elderly person;
- (c) the advocates of the parties, the Attorney General or a person authorized by him;
- (d) the judge seized of the case and the clerk;
- (e) the Commission.

However, no person excluded from the court-room under section 47 may have access to a record, unless the Court limits such prohibition to the documents it specifies.

68. A person authorized to have access to a record under the third paragraph of section 52 or section 67 must respect the confidential nature of the information thus obtained. He must also, if a copy of or extract from a document filed in the record of the Court has been issued to him, destroy that copy or extract as soon as it is of no further use to him.

69. The Court may nevertheless allow access to the records for purposes of study, teaching or research, provided that the anonymity of the elderly person and his close relations is preserved.

Every person who contravenes the first paragraph is guilty of contempt of court and the Court may condemn him to the penalties prescribed in article 51 of the Code of Civil Procedure.

DIVISION II

APPEAL TO THE SUPERIOR COURT

70. An appeal lies to the Superior Court from any decision of the Court of Québec rendered under the authority of this Act.

The appeal shall be brought before the Court sitting in the judicial district where the decision of the Court of Québec was rendered.

71. The appeal may be brought by the elderly person, his close relations, the Commission, the Attorney General or any party in first instance, and each of them may, in addition, if not a party to the appeal, intervene *ex officio* in the proof and hearing as if a party thereto. Notice of at least one clear day to the parties in appeal is required.

72. The Court shall proceed with the appeal on the transmission of the record and the depositions of the witnesses; it may, however, hear witnesses, if it so wishes, and even receive any additional evidence.

73. The appeal is brought by filing, at the office of the Court, a notice of appeal served on the respondent or on his advocate, within thirty days of the day the decision was rendered.

74. The notice of appeal shall contain the description of the parties, the grounds for appeal, the conclusions sought, the name of the court that rendered the decision and the date thereof.

75. The filing of the notice of appeal does not suspend the execution of the decision unless a judge of the Court, upon a motion, orders otherwise.

76. The clerk who receives the notice of appeal shall transmit a copy of the notice of appeal and the original record of the case to the office of the Court with a list of the documents therein and a copy of the entries made in the register.

77. The appeal shall be heard and decided by preference.

78. The Court may from time to time adjourn the hearing of an appeal on the conditions it considers necessary.

79. The appellant may, before the case is heard, discontinue his appeal by filing at the office of the Court a written discontinuance with evidence of service on the respondent.

80. Any act of procedure required or authorized under this division shall be served in the manner provided for in the Code of Civil Procedure.

81. The rules contained in sections 34 to 69 of this Act, adapted as required, apply to this division.

82. On deciding the appeal, the Court may

(a) uphold the decision appealed from;

(b) make the decision that the Court of Québec should have made; or

(c) make any other decision it considers appropriate.

83. The judgment of the Court is executory in the same manner as if it had been rendered by the Court of Québec.

DIVISION III

APPEAL TO THE COURT OF APPEAL

84. An appeal lies to the Court of Appeal, with leave of that Court or of a judge of that Court, from any judgment of the Superior Court rendered under the authority of this Act, if the party making the application shows a sufficient interest to warrant a decision on a question of law only.

85. The appeal is brought before the Court of Appeal sitting at Montréal or at Québec, according to the place where an appeal from a judgment in a civil matter would be instituted.

86. An application for leave to appeal shall be presented by motion within fifteen days of the date of judgment or within any other number of days, not exceeding thirty days, fixed by the Court of Appeal or a judge of that Court, either before or after the said time period of fifteen days has expired.

87. The motion shall be accompanied with a copy of the judgment and a notice specifying the date of presentation of the motion.

88. At least five days before the date of presentation, the motion shall be served on the respondent or on his advocate and on the judge who rendered the judgment.

89. If the motion is granted, the appeal shall be brought within fifteen days of the judgment authorizing it.

90. The appeal is brought by filing at the office of the Superior Court a notice of appeal accompanied with a certified copy of the judgment authorizing it and evidence of service thereof on the respondent or on his advocate.

91. Within ten days following the date on which the notice of appeal is served, the appellant and the respondent shall file a written appearance at the Appeal Office.

92. Within thirty days following the filing of the notice of appeal, the appellant shall file at the Appeal Office ten copies of a factum setting out his claims and serve two copies of such factum on the respondent or his advocate. Such factum shall contain the judgment appealed from and the notes filed by the judge.

93. The respondent shall, within fifteen days of the filing at the Appeal Office of the factum of the appellant, file at the Office ten copies of his own factum and serve two copies thereof on the appellant.

94. If the appellant does not file his factum within the time allowed, a judge of the Court of Appeal may, on motion, dismiss the appeal; if it is the respondent who is in default, the Court of Appeal may refuse to hear him.

95. The appellant shall file, except if exempted from it by the Court of Appeal or a judge of that Court, the transcription of the evidence gathered before the Superior Court.

96. The Court of Appeal may make any decision considered appropriate for the purpose of exercising its jurisdiction, *ex officio* or on application by one of the parties.

97. Sections 74 to 80, 82 and 83, adapted as required, apply to this division.

CHAPTER IV

FINAL PROVISIONS

98. For the purposes of this Act, the Government may, by regulation, define the expression “elderly person”.

99. The Minister designated by the Government is responsible for the administration of this Act.

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