
NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE

FOURTH SESSION

Bill 51

Public Service Act

First reading



Introduced by
Mrs Denise Leblanc-Bantey
Minister of the Civil Service

EXPLANATORY NOTES

This bill proposes a revised Act on the public service.

The bill establishes that the role of the public service is to provide the public with the service it is entitled to expect, to implement the policies formulated by the Government and to ensure that the other Government objectives are attained. To achieve its mission the bill provides that the public service must be structured in a way to promote efficient management, accountability and better service on the part of public servants, equal access to employment in the public service for all citizens, impartial and equitable decisions in respect of public servants and the highest possible contribution of all components of Québec society to the composition of the public service.

Chapter II confirms the rights and obligations of public servants, prescribes standards of ethics and discipline in their regard, and specifies the modalities concerning probationary periods, permanent tenure, disciplinary actions and administrative measures, the right of public servants to engage in political activities and restrictions in that respect, and their rights of appeal.

Chapter III provides that, under the direction of the minister, deputy ministers and chief executive officers of agencies are responsible for the management of human resources under their authority and must exercise their powers within the framework of the general government policies on human resources.

Chapter III also establishes that public servants are recruited and promoted by way of competitions, the candidates declared qualified being ranked by levels, and appointment is made, according to the ranking of levels, by selection among persons of the same level.

It also introduces a new classification grouping deputy ministers, assistant deputy ministers and associate deputy ministers as administrators of state.

Chapter IV maintains for the most part the provisions on collective bargaining now in force, with concordance adjustments only.

Chapter V deals with the institutional scope of the public service.

Under this chapter the Ministère de la Fonction publique and the Office de recrutement et de sélection du personnel de la fonction publique are abolished and replaced by the Conseil du trésor and the Office des ressources humaines.

The Conseil du trésor becomes responsible, in particular, for formulating general policies on human resources management and equal opportunity programs, and for negotiating collective agreements and supervising their application.

The Office des ressources humaines which is responsible for the recruitment and promotion of public servants may delegate certain of its powers to deputy ministers and chief executive officers of agencies and is entrusted with advisory functions and service duties.

The Commission de la fonction publique is empowered to hear appeals brought by public servants. The Commission is also responsible for verifying that decisions under the Act affecting public servants are fair and impartial and to evaluate the functioning of the recruitment and promotion system. Finally, Chapter V provides that the Commission may appoint deputy commissioners to meet surplus work situations in cases of appeals from disciplinary actions and administrative measures.

Chapter VI empowers the Government to make regulatory provisions in relation to standards of ethics and discipline, disciplinary actions, temporary relief from duties and the classification standards of public servants.

Chapter VII provides penalties applicable to persons guilty of fraudulent practices in connection with a recruitment or promotion competition. The penalties would also apply to persons using threats or intimidation to induce a public servant to engage in partisan activities or to punish him for not doing so.

Finally, Chapter VIII of the bill contains transitional and final provisions and introduces concordance amendments to the various Acts listed below. Several provisions of a technical nature allow the Conseil du trésor and the Office des ressources humaines to succeed to the Ministère de la Fonction publique and to the Office du recrutement et de la sélection du personnel de la fonction publique.

ACTS AMENDED BY THIS BILL

- (1) the Financial Administration Act (R.S.Q., chapter A-6);
- (2) the Act respecting the National Assembly (R.S.Q., chapter A-23.1);

- (3) the Labour Code (R.S.Q., chapter C-27);
- (4) the Executive Power Act (R.S.Q., chapter E-18);
- (5) the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- (6) the Government Departments Act (R.S.Q., chapter M-34).

Bill 51

Public Service Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPLICATION AND OBJECT OF THE ACT

DIVISION I

APPLICATION

- 1.** This Act applies to persons appointed thereunder.

Persons admitted to the public service under a former Act are deemed to have been appointed under this Act.

Every person contemplated in this section is a public servant.

DIVISION II

OBJECT OF THE ACT

- 2.** The role of the public service is to provide the public with the services of quality to which it is entitled, implement the policies formulated by constituted authority and ensure the attainment of the other objectives of the state.

- 3.** The object of this Act is to enable the public service to fulfil its role. For that purpose, the Act establishes a mode of organization of human resources intended to promote

(1) efficient administration and optimum utilization and development of human resources,

(2) the exercise of the powers of human resources management in the most personal manner possible and the application of a system under which the public servant vested with such management powers is accountable for his acts, within the means put at his disposal,

(3) equal opportunity of employment in the public service for all citizens,

(4) impartiality and fairness in decisions affecting public servants, and

(5) optimum contribution of the various components of Québec society to the public service.

CHAPTER II

RIGHTS AND OBLIGATIONS OF PUBLIC SERVANTS

DIVISION I

CONDITIONS OF SERVICE

§ 1.—*Standards of ethics and discipline*

4. A public servant has such primary and habitual duties and powers as are attached to his position.

A public servant also has the powers and duties which may be assigned to him by any person duly authorized to define his duties and to supervise his work.

A public servant shall exercise his powers and perform his duties in accordance with the standards of ethics and discipline prescribed in this Act or in the regulations under it.

5. Every public servant is bound *ex officio* to be loyal and to bear allegiance to constituted authority.

A public servant shall perform his duties in the public interest, to the best of his ability, with honesty and impartiality, and shall treat the public with consideration and diligence.

6. Subject to the provisions relating to access to information and the protection of personal information, every public servant is bound

to confidentiality regarding any matter brought to his knowledge in the performance of his duties.

7. In no case may a public servant have a direct or indirect interest in any undertaking that causes his personal interest to conflict with his duties of office.

Where the interest devolves to him by succession or gift, he shall renounce or dispose of it with all possible dispatch.

8. In no case may a public servant accept any sum of money or any other consideration for the performance of his duties over and above the amount allocated to him for that purpose under this Act.

9. In no case may a public servant use directly or indirectly for his own benefit any state property or any information obtained by him as a public servant.

10. A public servant shall be politically neutral in performing his duties.

11. A public servant shall act with reserve in any public display of his political opinions.

12. Nothing in this Act prohibits a public servant from being a member of a political party, attending a political meeting or making, in accordance with the law, a contribution to a political party or a local association of a political party or to a candidate in an election.

13. A public servant who contravenes the standards of ethics and discipline is liable to disciplinary action, which may include dismissal, according to the nature and gravity of the fault.

§ 2.—Probation and permanent tenure

14. Every person recruited as a public servant shall undergo a probationary period of not less than six months.

The Conseil du trésor may determine the classes of positions for which a probationary period of over six months is required, and fix the length of such a period.

15. A public servant obtains permanent tenure after being employed continuously in the public service for two years.

The Conseil du trésor shall define what constitutes the fact of being employed continuously in the public service, within the meaning of the first paragraph.

16. In the case of a promotion, the Conseil du trésor may determine the classes of positions for which a probationary period is required and fix the length of such a period.

§ 3.—*Disciplinary action and administrative measures*

17. The imposition of a disciplinary action or administrative measure on a public servant is effected by the deputy minister or the chief executive officer to whom he is responsible.

18. Any public servant who is incompetent in the performance of his duties or who is unable to perform them may be demoted or dismissed.

19. Every public servant undergoing a probationary period other than a probationary period required on promotion may be dismissed without other procedure or formality than fifteen days' prior notice in writing.

20. Every public servant who has not acquired permanent tenure may be dismissed for lack of work without other procedure or formality than fifteen days' prior notice in writing.

21. Without prejudice to any disciplinary action, if a public servant is absent from the service without permission, a deduction proportionate to the duration of his absence must be made from his remuneration.

22. A public servant may, in accordance with the requirements prescribed by regulation, be provisionally relieved of his duties in order to enable the competent authority to make an appropriate decision in the case of an urgent situation requiring prompt intervention, or in a presumed case of serious fault, whether it be a breach of a standard of ethics or discipline or a criminal or penal offence.

DIVISION II

POLITICAL ACTIVITIES

23. A public servant wishing, on the date of the writ ordering a provincial election, to be a candidate in that election must apply for and is entitled to leave without pay; he is entitled to resume his position within 30 days of the date for the nomination of candidates if he is not nominated, or of the date on which another person is declared elected.

24. A public servant elected in a provincial election ceases to be subject to this Act, except sections 25 and 127 to 129. Throughout his tenure as a Member of the National Assembly, he retains his classification on the day he was elected.

25. On ceasing to be a Member of the National Assembly, a public servant is entitled to apply to the Office des ressources humaines to have his qualifications reexamined and to be appointed to a position commensurate with his qualifications.

The application must be made in writing and received not later than sixty days after the public servant ceases to be a Member.

26. A public servant employed as a member of the office staff of a Minister or of any other person contemplated in section 124.1 of the Act respecting the National Assembly (R.S.Q., chapter A-23.1) ceases to be subject to this Act, except sections 27 and 127 to 129, and is governed by sections 11.5 and 11.6 of the Executive Power Act (R.S.Q., chapter E-18) or by sections 124.1 and 124.2 of the Act respecting the National Assembly, as the case may be.

While the public servant is employed on an office staff, he retains his classification at the time of his appointment to the staff.

The public servant may in the meantime apply to the Office des ressources humaines for an opinion on the classification that could be assigned to him in the public service if he ceased to be employed on an office staff.

The opinion must be based on the classification of the public servant in the public service on the day he was appointed to an office staff and on the experience and formal training he has acquired since he has been employed on an office staff.

27. A public servant ceasing to be employed on the office staff of a Minister or of a person contemplated in section 124.1 of the Act respecting the National Assembly is entitled to require the Office des ressources humaines to reexamine his qualifications and to place him by priority in a position commensurate with his qualifications.

The requisition must be made in writing and received not later than 30 days after the public servant ceases to be employed on an office staff.

28. Where the Office is unable to place a public servant contemplated in sections 25 and 27, he is placed on reserve at the Office, and is under its responsibility until he is placed.

DIVISION III

PROTECTION

29. Where a public servant is sued by a third person for an act he has done or failed to do in the performance of his duties, the Attorney

General shall take up his defense unless he is charged with a gross fault or a personal fault distinct from the performance of his duties.

DIVISION IV

APPEAL

30. Except where jurisdiction in the matters enumerated in this paragraph is assigned to another authority under a collective agreement, a public servant may appeal to the Commission de la fonction publique from a decision informing him of

- (1) his classification following his appointment to a new or changed class of positions;
- (2) his demotion;
- (3) his dismissal;
- (4) disciplinary action;
- (5) his being provisionally relieved of his duties.

An appeal under this section must be made in writing and received by the Commission within 30 days of the date the contested decision was sent.

This section, except subparagraph 1 of the first paragraph, does not apply to a public servant undergoing a probationary period under section 14.

31. The Commission may confirm, amend or quash any decision appealed from under section 30. However, in the event of a disciplinary action or where a public servant is provisionally relieved of his duties, the Commission may amend the decision and substitute therefor any decision it considers just and reasonable with regard to all the circumstances of the case.

32. If a public servant considers that the procedure used in determining the eligibility of or evaluating candidates in a competition for promotion or a grade advancement examination was irregular or illegal, he may appeal to the Commission de la fonction publique by an application in writing, which must be received by the Commission within 30 days of the sending of a notice advising him that he is not eligible for the competition or the grade advancement examination, or informing him of the results of the competition or examination.

33. The Commission may refuse to hear an appeal under section 32 relating to a competition for promotion where it considers the application frivolous or in bad faith.

34. If the Commission de la fonction publique confirms the demotion of a public servant, it may, on the application of the appellant, request the Office des ressources humaines to give it an opinion on the classification that the Office considers most nearly commensurate with the appellant's qualifications, after having examined them.

Upon receipt of the opinion, the Commission may order that demotion to the class of positions indicated in the opinion of the Office be substituted for the demotion appealed from.

CHAPTER III

MANAGEMENT OF HUMAN RESOURCES

DIVISION I

RESPONSIBILITIES OF DEPARTMENTS AND AGENCIES

35. A deputy minister is responsible, subject to the direction of his minister, for the management of the human resources of the department.

36. The chief executive officer of an agency to which the staff is appointed under this Act is responsible for the management of the human resources of the agency.

The chief executive officer is the person identified as such by law or, failing that, the person holding the highest authority in the agency.

37. Deputy ministers and chief executive officers shall manage the human resources under their authority in conformity with the general policies of the Government in that regard.

The management of human resources includes, in particular, the planning, organization, supervision, development and evaluation of such resources.

38. Deputy ministers and chief executive officers shall exercise their responsibilities by favouring, to the extent that they consider most appropriate, the delegation of responsibilities to their assistants and to the managerial staff.

Senior executives and managers form part of the managerial staff.

39. A deputy minister or a chief executive officer may, in writing and to the extent he indicates, delegate the exercise of the powers conferred on him under this Act to a public servant or employee.

He may, in the instrument of delegation, authorize the subdelegation of the powers he indicates, and in that case shall name the employee or the public servant to whom they may be subdelegated.

DIVISION II

STAFFING

§ 1.—*Recruitment and promotion*

40. Public servants are recruited and promoted by way of competition.

Notwithstanding the first paragraph, a public servant whose position is upgraded may be promoted without a competition, according to the rules determined by the Office des ressources humaines by regulation, if he meets the conditions of eligibility to the class of positions so upgraded and if he is declared qualified by the Office.

41. The Office des ressources humaines shall prescribe the conditions of eligibility for a competition held to fill a position or several positions.

The conditions of eligibility must be consistent with the regulations under section 101 and with minimum conditions of eligibility to the classes of positions prescribed by the Conseil du trésor and allow the implementation of Government policies regarding, in particular,

(1) equal opportunity programs intended, in particular, for women, members of cultural communities, handicapped persons or Native persons;

(2) recruitment, whether from educational institutions or from all or any category of the persons employed in the education or social affairs sector.

The conditions of eligibility for a competition may include requirements which take into account the nature and particularities of the position or positions for which the competition is held.

42. The Office des ressources humaines shall invite applications for a competition. It may also invite applications in order to establish provincial, regional or local candidate inventories.

43. Invitations for applications must be made in such a manner that persons likely to meet the conditions of eligibility have a reasonable opportunity to apply.

44. The conditions of entry on a candidate inventory are prescribed by the Office des ressources humaines according to the modalities prescribed in section 41.

45. When the Office des ressources humaines holds a competition, it must admit the persons who have submitted their applications and meet the conditions of eligibility.

Notwithstanding the first paragraph, where the Office considers that, in view of the large number of candidates, it would be unreasonable to evaluate all the candidates who meet the conditions of eligibility, it may reduce their number according to the norms it may determine by regulation. In no case may the norms have the effect of changing the conditions of eligibility to the competition.

The Office shall state when inviting applications what means it intends to use to reduce the number of applications.

46. The evaluation of candidates eligible for a competition is based on the criteria of knowledge, experience or qualifications required for the position.

47. The Office des ressources humaines shall determine the evaluation procedure, which must be of such a nature as to allow impartial evaluation of the candidates.

48. A competition leads to the preparation of a list of the candidates declared qualified, grouping them by levels in accordance with the regulations under section 101.

§ 2.—Appointment and classification

49. A public servant comes into office, or changes position, by appointment by the deputy minister or the chief executive officer responsible for the position to be filled.

50. Where the appointment of a public servant involves a change of department or agency, the prior agreement of the deputy minister or chief executive officer to whom he is responsible is required. This requirement does not apply in the case of a promotion.

51. Following a competition, the appointment of a public servant is made by selecting a person from among the persons of the same level according to the ranking order of the levels.

Persons at a given level are selected before those at a lower level.

52. When a public servant comes into office or changes class of positions or grade, the deputy minister or the chief executive officer

shall assign a classification to him in accordance with the regulations under section 124; the same applies on the appointment of a public servant to a new or changed class of positions.

DIVISION III

ADMINISTRATORS OF STATE

53. A public servant acquires the classification of administrator of state on his appointment to any of the following positions:

(1) Secretary-General and Associate Secretary-General of the Conseil exécutif;

(2) Secretary, Deputy Secretary or Associate Secretary of the Conseil du trésor;

(3) deputy minister or assistant or associate deputy minister;

(4) chairman or vice-chairman of the Office des ressources humaines.

54. The Government appoints an administrator of state to a position on a motion of the Prime Minister. The Government determines the classification of a public servant within the group of administrators of state.

55. Where the Government engages a person by contract to hold any office listed in section 53, the person does not have the classification of a public servant, but Chapter VII applies to him as if he were a public servant.

56. In the case of the temporary absence or inability to act of a person holding any office listed in section 53, the minister or the deputy minister may designate a person to replace him during the interim.

57. The Government, on the recommendation of the Prime Minister, may assign a classification in another group of positions to an administrator of state.

58. The Government shall determine the classification and fix the remuneration, social benefits and other conditions of employment of the administrators of state.

59. Disciplinary action is imposed on an administrator of state by the minister or deputy minister, as the case may be, to whom he is responsible.

60. The Government, on the recommendation of the Prime Minister, may dismiss an administrator of state for just and sufficient cause.

61. The provisions of the other chapters, except sections 14 to 20, 23 to 25, 40 to 52 and 77, apply to the administrators of state, to the extent that they are consistent with this chapter.

CHAPTER IV

COLLECTIVE BARGAINING

DIVISION I

GENERAL PROVISIONS

62. The Syndicat des fonctionnaires provinciaux du Québec is recognized as the representative of all public servants who are employees within the meaning of the Labour Code (R.S.Q., chapter C-27), except

(1) employees who are teachers;

(2) employees who are members of the professional corporations of advocates, notaries, physicians, dentists, pharmacists, optometrists, veterinary surgeons, agronomists, architects, engineers, land-surveyors, forest engineers, chemists or chartered accountants, and persons admitted to the study of these professions;

(3) employees who are university graduates, economists, geographers, geologists, biologists, town-planners, accountants, auditors, psychologists, social workers, guidance counsellors and other professionals;

(4) employees who are peace officers belonging to any of the following groups:

(a) wildlife conservation officers;

(b) fisheries officers;

(c) Youth Court constables;

(d) security officers;

(e) transportation officers;

(f) instructors, guards and nursing attendants in houses of detention;

(g) any other group performing duties of a peace officer.

63. Section 62 has the same effect as a certification granted by a labour commissioner under the Labour Code for two separate employee groups, namely:

- (1) public servants other than workmen;
- (2) workmen.

The Labour Court established by the Labour Code decides all disputes respecting the effective exclusion or inclusion of a public servant or a class of public servants from or in either of such groups, and has the power to cancel the certification and grant another upon the conditions prescribed by the Labour Code.

64. The Government may grant certification to any association of employees to represent each of the groups contemplated in paragraphs 1, 3 and 4 of section 62 and the members of each of the professions contemplated in paragraph 2 of the same section together with the persons admitted to the study of such profession.

Certification under this section is granted only upon the recommendation of a joint committee constituted for such purpose by the Government, one-half of the members of which are representatives of the group concerned.

Certification under this section has the same effect as certification granted by a labour commissioner under the Labour Code.

The Labour Court decides all disputes respecting the effective exclusion or inclusion of a public servant from or in any of the groups referred to in the first paragraph and may cancel the certification and grant another upon the conditions prescribed by the Labour Code.

65. With the consent of the majority of the employees who are members or admitted to the study of a profession contemplated in paragraph 2 of section 62, certification may be granted to an association representing more than one of such groups and, with the consent of the absolute majority of the group contemplated in paragraph 3 of the same section, certification may be granted to such an association for such group together with the others which it represents.

With the consent of the majority of the employees who are members of a group contemplated in paragraph 4 of section 62, certification may be granted to an association to represent more than one of such groups.

Notwithstanding the time limit provided in section 111.3 of the Labour Code, certification to represent more than one group, in accordance with the second paragraph, may be applied for to the Labour Court within 15 days of the decision of the Court rendered pursuant to section 64.

66. Every association of employees contemplated in this Act has the right to affiliate, but an association of employees contemplated in paragraph 4 of section 62 shall only affiliate with an association

exclusively grouping employees performing duties of a peace officer, except the members of the Sûreté du Québec.

67. All employee groups contemplated in paragraph 4 of section 62 are forbidden to strike.

All other groups are forbidden to strike unless the essential services and the manner of maintaining them are determined by prior agreement between the parties or by decision of the Labour Court.

68. Public servants are governed by the provisions of the collective agreement applicable to them, or if there are no such provisions in the collective agreement, by the provisions of this Act. However, no provision of a collective agreement may limit the powers of the Commission de la fonction publique or the powers of the Office des ressources humaines relating to the holding of recruitment or advancement competitions or certificates of qualification, or examinations for grade advancement of public servants or their certificates of qualification. Moreover, no clause of any collective agreement may limit the powers of a deputy minister, a chief executive officer, the Government or the Conseil du trésor with regard to any of the following matters:

(1) the appointment of candidates to the public service or the promotion of public servants;

(2) the classification of positions, including the definition of conditions of eligibility and the determination of the level of positions relating to the classification;

(3) the granting of permanent tenure and the determination of the duration of the probationary period for recruitment or on promotion;

(4) the establishment of standards of ethics and discipline in the public service;

(5) the establishment of organization plans and staffing procedures.

A decree adopted under the Act respecting labour relations in the construction industry (R.S.Q., chapter R-20) or under another Act, or a document in lieu thereof or a collective agreement made with a view to such a decree does not apply to the conditions of employment of public servants.

DIVISION II

SPECIAL PROVISIONS APPLICABLE TO PERSONS
PERFORMING DUTIES OF A PEACE OFFICER§ 1.—*Bargaining method*

69. A joint parity committee is instituted for each certified association representing one or more groups of employees contemplated in paragraph 4 of section 62.

Each committee shall consist of a chairman, who shall not have the right to vote, appointed by the Government after consultation with the association concerned, and eight other members of whom four shall be appointed by the Conseil du trésor and four by each certified association.

70. The committee shall initiate and carry on negotiations in which its members shall take part as representatives of the Conseil du trésor or of the certified association with a view to the making or the renewal of a collective agreement.

The committee shall perform any other duty the parties may agree to entrust to it.

71. The committee shall meet at the request of the chairman who shall convene it whenever requested by the Conseil du trésor or by the certified association.

72. When it deems it expedient, the committee shall submit to the Government its recommendations concerning the making or the renewal of a collective agreement.

§ 2.—*Collective agreement*

73. On being approved by the Government, the recommendations of the committee submitted pursuant to section 72 have the effect of a collective agreement signed by the parties.

§ 3.—*Method for the settlement of disputes*

74. The committee shall negotiate a method for the settlement of disputes.

CHAPTER V

INSTITUTIONAL STRUCTURE OF THE PUBLIC SERVICE

DIVISION I

CONSEIL DU TRÉSOR

75. The Conseil du trésor is responsible, on behalf of the Government, for establishing general policies on the management of human resources in the public service and assessing implementation of the policies.

76. The Conseil du trésor shall determine the maximum number of employees required for the administration of each department or agency and the classification of positions or of the holders of positions in the public service. The classification of positions includes the minimum conditions of eligibility for the classes of positions.

The Conseil du trésor shall define the staffing modes which may be used to fill positions, in particular, assignments and transfers.

The Conseil du trésor shall make rules for the placing of public servants in a new class of positions and modalities for the identification, placing on reserve and assignment of public servants having permanent tenure who are surplus to the requirements of a department or agency.

77. The Conseil du trésor shall fix the remuneration, social benefits and the other conditions of employment of public servants.

No remuneration may be paid to public servants over and above the regular salary attached to their duties except in accordance with a decision of the Conseil du trésor.

Where this section will result in an increase in expenditures, the conditions of employment fixed become operative only when the Parliament has voted the necessary appropriations.

78. The Conseil du trésor is responsible for setting up equal opportunity programs to remedy the situation of persons belonging to groups discriminated against in employment.

The Government shall, once a year, make a report to the National Assembly on the implementation of the equal opportunity programs by the departments and agencies the employees of which are appointed and remunerated in accordance with this Act.

79. The Conseil du trésor may, at any time, verify or appoint a person or an agency to verify the implementation of its policies and programs.

80. The Conseil du trésor shall negotiate collective agreements with the certified associations of employees of the public service.

The Conseil du trésor shall sign the collective agreements, supervise their application and coordinate their interpretation.

81. For reasons of urgency or of public interest, or for practical reasons, the Conseil du trésor may, after consulting the Commission de la fonction publique, exempt any position or class of positions, owing to its special nature, from any provisions of this Act it may indicate.

In no case may the Conseil du trésor exempt any position or class of positions from the application of sections 62 to 74.

82. Where the Conseil du trésor exempts a position or class of positions from the provisions of this Act in accordance with section 81, it shall table a report within thirty days before the National Assembly if it is sitting, or before the President of the National Assembly if it is not sitting.

The report shall contain the opinion of the Commission de la fonction publique and indicate the positions or classes of positions so exempted and the reasons for the measures.

83. The Conseil du trésor shall determine the remuneration, social benefits and other conditions of employment of persons whose position or class of positions is exempt from the provisions of this Act and the manner in which a position or class of positions so exempted is governed.

84. The Conseil du trésor may, according to law, enter into an agreement with any government or agency, consistent with the interests and rights of Québec, in order to facilitate the carrying out of its functions under this Act.

DIVISION II

OFFICE DES RESSOURCES HUMAINES

§ 1.—*Organization of the Office*

85. An Office des ressources humaines is hereby established.

86. The Government shall appoint a chairman to the Office, who shall be the Chief Executive Officer of the Office, for a term of not over five years. He shall perform the duties assigned to the Office under this Act and be responsible for the administration of the Office.

The chairman shall remain in office at the expiry of his term until he is reappointed or replaced.

87. The Government shall appoint a maximum of three vice-chairmen for a term of not over five years.

Every vice-chairman shall hold his office under the authority of the chairman; he shall remain in office at the expiry of his term until he is reappointed or replaced.

88. The chairman and the vice-chairmen shall hold office on a full-time basis.

89. Where the chairman is temporarily absent or unable to act or the office of chairman is vacant, the Minister responsible shall designate one of the vice-chairmen to act in place of the chairman.

90. The staff of the Office is appointed and remunerated in accordance with this Act.

91. Any document signed by the chairman or by a person authorized by him binds the Office.

92. The Office may allow, in its internal management regulation, under the conditions and to the documents it may determine, that any required signature be affixed by means of an automatic device or that a facsimile of any signature be engraved, lithographed or printed on the documents. The facsimile has the same force as the signature itself only if the document is countersigned by the chairman or a person authorized by him.

93. Any document emanating from the Office or its staff as well as any copy of the document is authentic if the document is signed or if the copy is certified by the chairman or person authorized by him.

94. The Office, with the approval of the Government and according to law, may enter with any government or agency into any agreement consistent with the interests and rights of Québec, in order to facilitate the carrying out of its functions under this Act.

95. Not later than 31 July each year, the Office shall make a report of its activities for the preceding fiscal year to the Minister responsible for the administration of this division.

The report shall contain all the information that the Minister responsible may prescribe.

The report of activities shall be tabled before the National Assembly within thirty days of its receipt if the Assembly is in session or, if it is not sitting, within thirty days after the opening of the next session or resumption.

96. The books and accounts of the Office shall be audited each year by the Auditor General, and, in addition, as often as may be ordered by the Government.

The reports of the Auditor General must accompany the annual report of the Office.

§ 2.—*Functions and Powers of the Office*

97. The Office shall

(1) hold competitions for the recruitment and promotion of candidates and certify their qualifications;

(2) prescribe conditions of eligibility for a competition or establish a candidate inventory;

(3) invite applications in order to establish a candidate inventory;

(4) reduce the number of eligible candidates for a competition;

(5) assess and certify the qualifications of candidates for promotion without a competition;

(6) hold grade advancement examinations for public servants and certify their qualifications;

(7) give its opinion on the classification it deems most consistent with a person's qualifications, after examining the qualifications, in accordance with the law;

(8) propose measures to the Government, the Conseil du trésor, a department or an agency to improve staffing and the management and development of human resources within the public service, and to ensure equal opportunity for employment;

(9) advise any department or agency, the Conseil du trésor or the Government on management and administrative organization, particularly to improve the quality of service to the public and the efficiency of the organization and staff of the departments and agencies;

(10) make researches, studies and inquiries in the field of human resources management, coordinate them with those made by the departments or agencies, and see that the results are circulated;

(11) at the request of any department or agency, the Conseil du trésor or the Government, see to the implementation of policies or programs of human resources management;

(12) institute and maintain, in collaboration with the departments and agencies, and in accordance with policies established by the Conseil

du trésor, a career planning and development system for the managerial staff;

(13) develop and maintain an integrated data system for the management of human resources.

98. The Office shall place and, where applicable, retrain permanent public servants who have been placed on reserve or who exercise their right to reappointment according to law or to an agreement with the Government.

99. Where the Office is unable to place a public servant having permanent tenure, who has been placed on reserve, in a position consistent with his classification, the Office may assign a new classification to him in conformity with the modalities prescribed by the Conseil du trésor or provided in a collective agreement, after examining his qualifications.

In no case may the new classification entail a decrease in the regular salary to which the public servant was entitled before being assigned that classification.

100. The Office may, in writing and to the extent it may indicate,

(1) delegate the exercise of its functions to a member of its staff;

(2) delegate to a deputy minister or chief executive officer the exercise of its functions under this Act, except the functions assigned to it under sections 25, 27, 28, paragraphs 5, 6 and 7 of section 97 and sections 98, 99 and 101.

The instrument of delegation may authorize the deputy minister or the chief executive officer to subdelegate the functions it indicates, and, as the case may be, identify the holders of the positions or the public servants to whom they may be subdelegated.

The Office may verify or appoint a person or an agency to verify the carrying out of the delegation or subdelegation, or revoke the delegation at any time.

101. The Office shall, by regulation, determine

(1) the procedure for holding competitions for recruitment and promotion;

(2) geographical areas and criteria by which a person belongs to an area for eligibility to a competition or a candidate inventory;

(3) the administrative body to which a public servant must belong in order to be eligible for a competition or a candidate inventory;

(4) the norms for reducing the number of eligible candidates for a competition;

(5) the norms relating to the grouping into levels of candidates declared qualified in a competition and to the lists of certifications of qualifications;

(6) the procedure for the holding of grade advancement examinations;

(7) conditions, cases and categories of cases where the upgrading of the position of a public servant may allow him to be promoted without a competition;

(8) its internal management regulations.

102. The Office shall publish every draft regulation in the *Gazette officielle du Québec* with a notice that it may be adopted with or without amendment at the expiry of 30 days from that publication.

Regulations of the Office are subject to approval by the Government and come into force fifteen days after publication in the *Gazette officielle du Québec* or on any later date fixed therein.

DIVISION III

COMMISSION DE LA FONCTION PUBLIQUE

§ 1.—*Organization of the Commission*

103. A Commission de la fonction publique is hereby established.

104. The Commission consists of not fewer than three nor over five members, including a chairman, who is its Chief Executive Officer.

On the motion of the Prime Minister, the National Assembly shall appoint the members by a resolution approved by not less than two-thirds of its members.

The Assembly shall, in the same manner, fix the remuneration, social benefits and other conditions of employment of the members of the Commission.

Members of the Commission shall perform their duties on a full-time basis.

105. The term of office of any member of the Commission is not over five years.

At the expiry of his term, a member remains in office until he is reappointed or replaced.

106. A member of the Commission may resign at any time by giving notice thereof in writing to the President of the National Assembly.

He shall not be dismissed except by a resolution of the Assembly, approved by not less than two-thirds of its members.

107. Where the chairman of the Commission is temporarily absent or unable to act or where the office of chairman is vacant, the President of the National Assembly may, with the consent of the Prime Minister and of the Leader of the Official Opposition in the Assembly, appoint one of the other members of the Commission to act in place of the chairman in the interim.

108. The secretary and the other members of the staff of the Commission are appointed and remunerated in accordance with this Act.

109. No member of the Commission may, under pain of forfeiture of office, have a direct or indirect interest in any undertaking that puts his personal interest in conflict with that of the Commission.

Forfeiture is not incurred if the interest devolves to a member by succession or gift, provided that he renounces or disposes of it with all possible dispatch.

110. The minutes of a sitting, approved by the Commission and signed by the chairman or the secretary, are authentic. The same rule applies to a document or a copy emanating from the Commission or forming part of its records, if it is certified by the chairman or the secretary.

111. Neither the Commission nor any of its members may be sued for any official act performed in good faith in the exercise of their functions.

112. Except on a matter of competence, no extraordinary recourse contemplated in articles 834 to 850 of the Code of Civil Procedure may be exercised nor any injunction granted against the Commission or against any of its members acting in his official capacity.

Two judges of the Court of Appeal, upon motion, may summarily annul any writ, order or injunction issued or granted contrary to the first paragraph.

§ 2.—*Functions and powers of the Commission*

113. In addition to hearing the appeals brought by public servants under this Act, the Commission shall

- (1) ascertain the impartiality and fairness of the decisions made under this Act, which affect public servants;
- (2) periodically evaluate the operation of the system of recruitment and promotion of public servants.

For the purposes of the carrying out of the first paragraph, the Commission shall make any inquiry it deems necessary, formulate recommendations to the appropriate authorities or, where it deems it useful, make a report to the National Assembly.

114. The Commission shall, by regulation,

- (1) determine the number of members required to hear and decide appeals;
- (2) determine the rules of proof and procedure;
- (3) provide for its internal management.

The Commission shall publish every draft regulation in the *Gazette officielle du Québec*, with a notice that it may be adopted with or without amendment at the expiry of 30 days from that publication.

Regulations of the Commission come into force fifteen days after publication in the *Gazette officielle du Québec* or on any later date fixed therein.

115. The Commission, its members and any person entrusted by it with making an inquiry have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

116. A member of the Commission may be recused; articles 234 to 242 of the Code of Civil Procedure apply to the recusation, *mutatis mutandis*.

117. The Commission has all the necessary powers to exercise its jurisdiction; it may, in particular, make any order it considers proper to safeguard the rights of the parties, and decide any question of fact or of law.

118. The Commission may extend any time limit fixed by law where it considers that a public servant was unable to act sooner or to appoint a person to act in his place within the prescribed time limit.

119. The Commission may, where justified by surplus work, appoint deputy commissioners for a term of not over one year to hear any appeal brought before the Commission under section 30.

The Office of the National Assembly shall fix the fees, allowances or salaries of the deputy commissioners.

Sections 109, 111, 112 and 115 to 117 apply to deputy commissioners.

120. Every deputy commissioner appointed by the Commission de la fonction publique is chosen from a list drawn up annually, on the recommendation of the Prime Minister, by a resolution of the National Assembly approved by not less than two-thirds of its members.

121. A decision of the Commission must be rendered in writing and be substantiated. It forms part of the records of the Commission.

The Commission may, for cause, review or revoke any decision it has rendered.

122. Not later than 31 July each year, the Commission shall submit a report of its activities for the preceding fiscal year to the President of the National Assembly. The report shall be tabled before the National Assembly if it is in session or, if it is not sitting, it shall be tabled within 30 days after the opening of the next session or resumption.

123. The books and accounts of the Commission shall be audited each year by the Auditor General and, in addition, as often as may be ordered by the Government.

The reports of the Auditor General must accompany the annual report of the Commission.

CHAPTER VI

REGULATIONS

124. The Government may, by regulation, on the advice of the Conseil du trésor,

(1) specify the standards of ethics and discipline prescribed in this Act and add to them;

(2) define disciplinary action applicable to public servants and determine the conditions under which they may be taken;

(3) determine on what conditions and according to what modalities a public servant may be provisionally relieved of his duties and the cases where the relief is with or without remuneration;

(4) fix the norms of classification of public servants.

125. The Government, by regulation, shall make provision for an appeal in the matters it determines, for public servants who are not governed by a collective agreement and for whom no appeal is provided in those matters under this Act.

The regulation shall also prescribe the rules of procedure to be followed.

An appeals committee consisting of not fewer than one nor more than three members appointed by the Government shall hear and decide any appeal. Sections 115 to 118 and the second paragraph of section 121 apply, *mutatis mutandis*, to the committee and its members.

126. The Government shall publish the text of every draft regulation in the *Gazette officielle du Québec* with a notice that it may be adopted with or without amendment on the expiry of thirty days from that publication.

Regulations of the Government come into force fifteen days after publication in the *Gazette officielle du Québec* or on any later date fixed therein.

CHAPTER VII

SANCTIONS

127. Every person who commits a fraudulent act, at a recruitment or promotion competition, a grade advancement examination or the establishment of a candidate inventory is guilty of an offence and liable, in addition to costs, to a fine of \$500 to \$2 000.

Every person who is found guilty or confesses his guilt regarding such an offence ceases to be eligible for any competition or examination for a period of two years.

128. Every person who uses intimidation or threats to induce a public servant to engage in partisan work or to punish him for refusing to do so is guilty of an offence and liable, in addition to costs, to a fine of \$500 to \$5 000.

129. Penal proceedings taken under this chapter are instituted in accordance with the Summary Convictions Act (R.S.Q., chapter P-15).

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

130. Section 20 of the Financial Administration Act (R.S.Q., chapter A-6) is replaced by the following section:

“20. The Secretary, Deputy Secretaries, Associate Secretaries and other officers of the Conseil du trésor shall be appointed and remunerated in accordance with the Public Service Act (1983, chapter *insert here the chapter number of this Act*).

The secretary shall exercise as regards the public servants of the Conseil such powers as the said Act confers upon a deputy minister.

The Conseil du trésor shall define the functions and duties of the secretary, deputy secretaries and associate secretaries and those of its public servants.”

131. Section 22 of the said Act is amended by replacing the first two paragraphs by the following paragraphs:

“22. The Conseil du trésor exercises the powers of the Government in all matters respecting the approval of organization plans for government agencies other than those whose staff is appointed and remunerated under the Public Service Act (1983, chapter *insert here the chapter number of this Act*), the conditions of employment of the staff of the agencies and the staff required for the management of such agencies.

The Conseil du trésor also exercises the powers conferred on the Government regarding the preparation and application of the general administrative policy to be followed in the public service and in the agencies contemplated in the first paragraph.”

132. The said Act is amended by inserting, after section 46, the following sections:

“46.1 The remuneration and expenses attached to the social benefits and other conditions of employment of public servants are paid out of the appropriations voted annually for that purpose by the Parliament or, where such is the case, in accordance with the constituting Act of an agency.

“46.2 Where the staff of an administrative unit or any part thereof is transferred from one department or agency to another, the Conseil du trésor may order that the appropriations voted for the staff be transferred to the department or agency taking charge of the staff.”

133. The Act respecting the National Assembly (R.S.Q., chapter A-23.1) is amended by inserting, after section 124, the following division:

“DIVISION III.1

“OFFICE STAFF

“**124.1** The Leader of the Official Opposition, a Member to whom paragraph 6 of section 7 of the Act respecting the conditions of employment and the pension plan of the Members of the National Assembly (R.S.Q., chapter C-82.1) applies, the President and the Vice-Presidents of the National Assembly, the Government House Leader, the Official Opposition House Leader and the House Leader of a party contemplated in paragraph 6 of section 7 of the said Act, and the Chief Government Whip and the Chief Official Opposition Whip in the National Assembly, may appoint their respective Executive Assistant and the other persons required for the orderly administration of their respective office.

“**124.2** The standards and scales according to which the Executive Assistant and the other members of the office staff are recruited, appointed and remunerated, as well as their other conditions of employment, are fixed by regulation of the Office of the National Assembly.”

134. Section 1 of the Labour Code (R.S.Q., chapter C-27) is amended by replacing subparagraph 3 of paragraph 1 by the following subparagraph:

“(3) a public servant of the Government whose position is of a confidential nature in the opinion of the Labour Court or under the terms of an agreement binding the Government and the associations certified in accordance with Chapter IV of the Public Service Act (1983, chapter *insert here the chapter number of this Act*) which are parties to a collective agreement that otherwise would apply to the public servant; such is the position of a conciliation officer of the Ministère du Travail, a certification agent or labour commissioner contemplated by this Act, public servant of the Conseil exécutif, of the Conseil du trésor, of the Auditor General, of the Commission de la fonction publique, of the Office des ressources humaines, of the office staff of a minister or of a deputy minister, or a public servant who, in a department or agency of the Government, is a member of the personnel service or of a personnel management division;”.

135. Section 4 of the Executive Power Act (R.S.Q., chapter E-18) is amended by repealing subparagraph 21 of the first paragraph.

136. Section 10 of the said Act is replaced by the following section:

“**10.** The Secretary-General and the Associate Secretaries-General of the Conseil exécutif are appointed and remunerated in accordance

with the Public Service Act (1983, chapter *insert here the chapter number of this Act*).

The Secretary-General shall assist the Conseil in the performance of its duties; he shall have, with regard to the public servants of the Conseil, the powers assigned by the said Act to a Deputy Minister.

The Secretary-General may, in writing, on the conditions, to the extent and for the time he specifies, delegate or subdelegate all or part of the responsibilities vested in him under this section.

The Government may confer on every Associate Secretary-General of the Conseil exécutif the rank and privileges of Deputy Minister, which shall not be cause for the conferee to cease to discharge his duties under the authority of the Secretary-General of the Conseil exécutif.”

137. The said Act is amended by inserting, after section 10, the following section:

“**10.1** The Executive Secretary to the Prime Minister has the same rank and privileges as those of a deputy minister. This section does not grant him the classification of administrator of state within the meaning of the Public Service Act (1983, chapter *insert here the chapter number of this Act*).”

138. The said Act is amended by inserting, after section 11.4, the following division:

“DIVISION II.2

“OFFICE STAFF OF MINISTERS

“**11.5** Every minister may appoint an executive assistant and any other person required for the orderly administration of his office.

“**11.6** The standards and scales according to which an executive assistant and the other members of an office staff are recruited, appointed and remunerated, as well as their other conditions of employment, are determined by the Conseil du trésor.”

139. Section 5 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is replaced by the following section:

“**5.** The other public servants and employees necessary for the proper administration of the department shall be appointed and remunerated in accordance with the Public Service Act (1983, chapter *insert here the chapter number of this Act*).

However, notwithstanding any inconsistent provision of any Act, regulation, by-law or any collective agreement within the meaning of

the Labour Code (R.S.Q., chapter C-27) or an arbitration award in lieu thereof, the Deputy Minister may object to the filling of a position in his department by a person who, during the preceding five years, has been convicted of or has pleaded guilty to an offence under a fiscal law of Canada, the Criminal Code, the Narcotic Control Act or the Food and Drugs Act (Statutes of Canada), to the extent that the offence is incompatible with the position to be filled, unless the person has been pardoned.

The Deputy Minister shall transmit his substantiated decision to the person concerned and to the Office des ressources humaines if a competition has been held.

Except where the position to be filled is of a casual nature, the person concerned, if he believes himself wronged by the decision of the Deputy Minister, may appeal therefrom to the Commission de la fonction publique by application, which must be received by the Commission within 30 days of the sending of the decision. The Commission shall hear the appeal and decide it unless a collective agreement or an arbitration award in lieu thereof has given jurisdiction over such matter to another person in accordance with section 68 of the Public Service Act.”

140. Section 1 of the Government Departments Act (R.S.Q., chapter M-34) is amended by repealing paragraph 20.

141. This Act replaces the Civil Service Act (R.S.Q., chapter F-3.1).

142. Matters pending before the Commission de la fonction publique established by the Civil Service Act (R.S.Q., chapter F-3.1) are continued in all respects in accordance with this Act by the Commission de la fonction publique established by this Act.

The Commission de la fonction publique established by this Act becomes a party to any proceeding to which the former Commission was a party on (*insert here the date preceding the day of the coming into force of this section*), without continuance of suit.

143. Appeals before the appeals committee under section 10 of the Civil Service Act (R.S.Q., chapter F-3.1) are continued in all respects in accordance with the said Act.

144. The regulations made by the Minister of the Civil Service under the Civil Service Act (R.S.Q., chapter F-3.1) remain in force until they are replaced or repealed by regulation of the Government.

145. Regulations made by the Office du recrutement et de la sélection du personnel de la fonction publique remain in force, to the

extent that they are consistent with this Act, until they are replaced or repealed by a regulation of the Office des ressources humaines.

146. The lists of certificates of qualifications now in force remain valid and are to be used in the application of this Act, as the Office des ressources humaines may determine.

147. Private secretaries and their assistants appointed under section 65 of the Civil Service Act (1965, 1st session, chapter 14) and in office on (*insert here the date of coming into force of this section*) continue to be governed by the legislative and regulatory provisions applicable to them until they cease to perform their duties as such.

148. Any reference in any Act, proclamation or commission, order in council, order or other document to the Civil Service Act (R.S.Q., chapter F-3.1) or to a provision of that Act is deemed a reference to this Act or the corresponding provision of this Act; and, in particular, any reference to section 97 of the Civil Service Act (R.S.Q., chapter F-3.1) is deemed a reference to section 30 of this Act.

Any reference to the Minister of the Civil Service or to the Ministère de la Fonction publique, the Office du recrutement et de la sélection du personnel de la fonction publique or the Commission de la fonction publique established by the Civil Service Act (R.S.Q., chapter F-3.1) is deemed a reference to the Government, the Conseil du trésor, the Office des ressources humaines or the Commission de la fonction publique established by this Act, according to their respective jurisdictions.

149. Public servants of the Ministère de la Fonction publique, of the Commission de la fonction publique established by the Civil Service Act (R.S.Q., chapter F-3.1) and of the Office du recrutement et de la sélection du personnel de la fonction publique in office on (*insert here the date preceding the day of the coming into force of this Act*), become, without other formality, public servants of the Conseil du trésor, of the Commission de la fonction publique established by this Act or of the Office des ressources humaines, as the Government may determine.

150. The records and documents of the Ministère de la Fonction publique, the Office du recrutement et de la sélection du personnel de la fonction publique and the Commission de la fonction publique established by the Civil Service Act (R.S.Q., chapter F-3.1) become records and documents of the Conseil du trésor, the Office des ressources humaines or the Commission de la fonction publique established by this Act, respectively, as determined by the Government.

151. Permanent tenure is granted to every casual public servant who meets the following conditions:

(1) he holds a position the activities of which form part of the regular activities of his department or agency;

(2) he has worked on specific projects for a period of a least five years from 1 July 1977;

(3) he has been named by the joint committee on casual employees established under the collective agreement signed on 8 October 1980 between the Gouvernement du Québec and the Syndicat des professionnels du gouvernement du Québec;

(4) his qualifications have been certified by the Office des ressources humaines.

This Act applies, where such is the case, without other formality, to the public servant, provided that he is still working for the same department or agency on (*insert here the date of tabling of Bill 51 in first reading*).

152. Persons employed in the public service on (*insert here the date of coming into force of Bill 51*) and who have acquired permanent tenure under the collective agreement signed on 24 October 1972 between the Gouvernement du Québec and the Syndicat des fonctionnaires provinciaux du Québec Inc., “workmen” unit, become permanent public servants within the meaning of this Act, without any other procedure or formality.

153. The holder of a position listed in section 53 on the day preceding the date of sanction of this Act becomes an administrator of state, except where he is engaged by contract.

A person who formerly held a position contemplated in section 53 or who is a Deputy Secretary at the Conseil exécutif on the day preceding sanction of this Act may become an administrator of state, as the Government may determine.

154. The members of the Commission de la fonction publique established by the Civil Service Act (R.S.Q., chapter F-3.1) in office on (*insert here the date of coming into force of this section*) remain in office for the unexpired position of their term.

155. The moneys appropriated for the purposes of the Commission de la fonction publique established by the Civil Service Act (R.S.Q., chapter F-3.1), the Office du recrutement et de la sélection du personnel de la fonction publique and the Ministère de la Fonction publique are transferred to the Commission de la fonction publique established by this Act, or to the Office des ressources humaines or to the Conseil du trésor, as the Government may determine.

[[**156.** The moneys required for the application of this Act are taken, for the fiscal year 1984-85, out of the consolidated revenue fund to the extent determined by the Government, and for subsequent fiscal years, out of the appropriations granted each year for that purpose by the Parliament.]]

157. The Government shall designate the Ministers responsible for the administration of this Act.

158. The Conseil du trésor shall, not later than (*insert here the date occurring five years after the coming into force of this Act*), make a report to the Government on the implementation of this Act and the expediency of maintaining it in force and, as the case may be, of amending it.

The report shall be tabled before the National Assembly within the next fifteen days if the Assembly is sitting or, if it is not sitting, before the President of the National Assembly.

Within one year of the tabling of the report, the President shall convene the Standing Committee on the National Assembly to examine the expediency of maintaining this Act in force or, as the case may be, of amending it, and to hear representations on the matter from interested persons and agencies.

159. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

160. This Act comes into force on the date to be fixed by proclamation of the Government, except provisions excluded by the proclamation, which will come into force on any later dates fixed by proclamation of the Government.

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