

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 198

Delegated Legislation Act

First reading

Second reading

Third reading

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L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTES

The purpose of this bill is to make the statutory power to make regulations of the Lieutenant-Governor in Council and of public bodies subject to parliamentary control and to certain standards of public policy. Division I contains the definition of a regulation, and of those other documents issued by the Government that are not regulations but which are executive acts. Division II specifies which entities may be holders of statutory power to make regulations, and their duties in that respect. Division III describes the legal effects of delegated legislation as well as of executive acts. Division IV sets forth the obligation to publish draft regulations and to observe a minimum period of 60 days between their publication and their adoption. This division also provides for the intervention of the Assemblée nationale to control the use of statutory power to make regulations. Division V provides additional requirements governing the procedure to be followed in the parliamentary control of delegated legislation and submits all regulations to a registration procedure by the Secretary General of the Assemblée nationale. Division VI provides for the implementation of the act and the transition between the existing situation and the proposed system.

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PREAMBLE

WHEREAS the Government must be responsible to the Assemblée nationale as regards the use of the power to legislate through regulations delegated to it by the Assemblée nationale or which the Assemblée nationale has delegated to any public body under government control;

Whereas it is expedient to confine the power to make regulations within limits conceived in such a manner as to prevent the relatively informal and summary exercise of the power to legislate by delegation from producing unexpected, exorbitant or unjust effects, unless it is the express will of the Assemblée nationale that such limits be set aside;

Whereas it is expedient that every draft regulation be made public before being adopted and that the adoption thereof be made public before it can be enforced;

Whereas it is necessary to establish a clear distinction between acts of delegated legislation and executive acts in order to lay down, with respect to the former, publication requirements and restrictions which cannot be applied to the latter;

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

DIVISION I

DEFINITIONS

1. In this act, unless the context indicates otherwise,

(a) "regulation" means a text contemplating an indeterminate number of persons, prescribing rules of conduct or giving rise to

rights or obligations, adopted by a statutory authority under power instituted for such a purpose by an act of the Assemblée nationale; any text corresponding to such a definition constitutes a regulation whether or not it bears the title, and the power to adopt such a text constitutes a power to legislate by delegation even if the enabling act does not expressly so state; nevertheless, a by-law adopted by a municipal or school corporation or by any establishment within the meaning of the Act respecting health services and social services (1971, chapter 48), or by any other body not responsible to a minister, is not a regulation within the meaning of this act;

(b) "a body under the responsibility of a minister" means a body which has any one of the following characteristics:

(i) the Government has the power to appoint its directors or its members;

(ii) the government has a formal power of direction over it;

(iii) its employees are appointed and remunerated in accordance with the Civil Service act (1978, chapter 15);

(c) "implementation instruments" means forms, questionnaires, attestations, certificates, receipts, permits, diplomas, information manuals or administrative guides provided for the use of the public or of public administration, intended to facilitate the implementation of the act and published under the authority of the responsible minister;

(d) "order" means any decision issuing from the Lieutenant-Governor in Council or a minister applicable to one or several specifically designated persons or objects and, in general, any decision of the Lieutenant-Governor in Council or a minister which is not a regulation or an implementation instrument.

However, a decision applicable to a specified person or object with the intent of excluding, including or otherwise modifying the scope, the extent or the effects of a regulation, constitutes a regulation rather than an order.

Texts adopted in lieu of a collective agreement by virtue of a general law or special act are also deemed to be orders.

DIVISION II

RECIPIENTS OF DELEGATED LEGISLATIVE POWER

2. The Assemblée nationale, on such conditions and in such a manner as it may prescribe, may delegate its power to legislate for specific purposes, either to the Lieutenant-Governor in Council, or to any public body established under an act of the Assemblée nationale for which a minister is responsible and for which he is answerable to the Assemblée nationale.

3. The minister responsible for the administration of the delegating act must draw up and publish a draft regulation and submit it to the Lieutenant-Governor in Council, when the delegation contemplates the Lieutenant-Governor in Council. When the delegation contemplates a public body, the latter shall draw up and publish the draft, and adopt it as the case may be. In such event and notwithstanding any incompatible legislative provision, the Lieutenant-Governor in Council may, at any time, in accordance with the terms and conditions provided for the amending of a regulation, disallow any such regulation, in which event it becomes null.

4. When an act stipulates that a draft regulation from a public body must be submitted for approval to the Lieutenant-Governor in Council, that body shall draw up and publish the draft under its authority prior to forwarding it to the minister responsible for the body. The Lieutenant-Governor in Council may then adopt or reject the draft as submitted but may not amend it.

5. The minister responsible for an act may adopt and publish implementation instruments for that act under his sole authority, without prejudice, however, to any consultation he may be required to make under the act.

6. No act of the Assemblée nationale granting to the Government any sum out of the consolidated revenue fund or authorizing it to grant any loans or advances may be interpreted as implying the delegation of a power to legislate by delegation respecting matters giving rise to such granting of sums or such authorization for loans or advances. Any such implication is without effect with respect to third persons and is binding upon the public administration only.

7. A regulation, to be valid, must state at the beginning a complete and precise reference to the source of the power to legislate by delegation under which it was adopted.

DIVISION III

THE EFFECTS OF DELEGATED LEGISLATION AND OTHER DOCUMENTS EMANATING FROM THE GOVERNMENT

8. A regulation comes into force at one minute past midnight on the day following that of its registration. However, no penalty may be imposed respecting a contravention arising prior to the publication of a notice of its adoption in the *Gazette officielle du Québec*.

9. A regulation has the force of law. A contravention of a regulation may give rise to penal proceedings to the extent and under the conditions specifically determined by the delegating act.

10. An implementation instrument has the same effect as a departmental directive addressed to members of the Civil Service. Such a directive has the effects provided in the Civil Service Act.

An implementation instrument is binding in respect of any person other than a member of the Civil Service acting in his or her official capacity. However, a contravention of an implementation instrument does not cause the forfeiture of a right nor the imposition of a penalty unless the contravention inevitably involves a contravention of the act or the act expressly provides for it.

11. An order affects only a person designated therein by name, if any. However, the rights thus acquired or the obligations imposed may validly be opposed to third persons or invoked by them. Other orders have the general effects of administrative acts.

DIVISION IV

THE PUBLIC CHARACTER OF REGULATIONS

12. The minister responsible for the drawing up of a regulation or the minister responsible for a public body entrusted therewith, shall table a draft regulation in the Assemblée nationale prior to its adoption, if the Assembly is sitting. If the Assemblée nationale is not sitting, the draft shall be forwarded to the Secretary General of the Assembly, who shall, at the earliest sitting day, put down the draft on the Agenda Paper. The draft shall remain on the Agenda Paper until the Assemblée nationale has disposed of it in accordance with its Standing Orders.

13. Each draft regulation shall be published in the *Gazette officielle du Québec*, showing the date on which it was tabled in the Assemblée nationale or on which it was forwarded to the Secretary General, as the case may be. No draft regulation may be submitted for adoption or be adopted until the expiry of at least 60 days from the date of its publication in the *Gazette officielle du Québec*. That period runs only during that period of the year which coincides with the regular sitting days of the Assemblée nationale in accordance with its Standing Orders.

14. Section 13 also applies to any amendment to a regulation already in force as well as to any new version of a draft

regulation already published but not yet adopted. In both such events, the Assemblée nationale, in accordance with such procedure as it may determine, may exempt the statutory authority from any publication and the period of 60 days when the amendment concerned is such that any delay and any new publication would serve no useful purpose.

15. No person may be required to prove before a court of justice, or any administrative tribunal having jurisdiction in the province of Québec, the existence of any regulation or implementation instrument or the contents thereof.

16. Every regulation shall be published in the *Gazette officielle du Québec* within thirty days following its registration. If a draft regulation is adopted in the form in which it was tabled in the Assemblée nationale, without any amendment, it is sufficient to publish a notice of its registration in the *Gazette officielle du Québec*.

DIVISION V

EXAMINATION AND REGISTRATION OF REGULATIONS BY THE ASSEMBLÉE NATIONALE

17. The Assemblée nationale, at any time, at the request of at least five of its members and in accordance with such procedure as it may determine, shall hold public hearings before a legislative committee to hear interested persons about a draft regulation or a regulation already in force.

If such hearings are convened within the period of 60 days provided in section 13, the draft regulation may not be referred to the statutory authority for adoption before the Assemblée nationale has adopted the report of the legislative committee entrusted with the examination thereof.

18. As soon as a regulation has been adopted, the statutory authority shall forward it to the Secretary General of the Assemblée nationale for registration. The Secretary General must ensure that this division and Division IV have been complied with, and he may not otherwise proceed with the registration except as regards section 16 for which he is responsible following the registration.

19. The Assemblée nationale, in accordance with such procedure as it may determine, shall control the use made by the statutory authority of its power to legislate by delegation. Such control shall be exercised by the examination of any draft regula-

tion put down upon its Agenda Paper in accordance with section 12, in the light of the following criteria:

- (1) the regulation is not in conformity with any one of the provisions of the Charter of human rights and freedoms;
- (2) the regulation has a retroactive effect;
- (3) the regulation is in contradiction with a provision of the enabling act in whole or in part;
- (4) the regulation grants to a person discretionary power on a matter which, under the enabling act, must be the subject of a regulation;
- (5) the regulation imposes a penalty or levies a tax not specifically provided for under the enabling act;
- (6) the regulation amends, suspends or rescinds any act, either in whole or in part, or exempts certain persons from the application thereof without the criteria under which such exemptions are made being expressly provided for in the enabling act;
- (7) the regulation designates the beneficiaries or persons otherwise contemplated by the enabling act without the criteria for their designation being expressly provided for in the enabling act;
- (8) the regulation prescribes the advantages, benefits, allowances and sums otherwise contemplated by the enabling act without the criteria for their prescription being expressly provided for in the enabling act;
- (9) the delegation of legislative power under which the regulation was adopted is drawn up in such a manner that it is impossible to determine accurately its object or its limits;
- (10) the regulation, even though drawn up in general terms, and considering the circumstances, contemplates and can only contemplate one person;
- (11) the regulation contains the definitions of the terms which are essential for the interpretation of the act;
- (12) the regulation does not state under which precise delegation it was established;
- (13) the regulation tends, directly or indirectly, to exclude the jurisdiction of the courts;
- (14) the regulation bears on a fundamental matter rather than on technical or administrative procedures.

When the Assemblée nationale is of opinion that any draft meets one or more of the above-mentioned criteria, the Secretary

General shall inform the statutory authority thereof. The statutory authority may then in no case proceed with the adoption of the draft regulation unless it is amended in such a manner as to correct the errors on which the opinion of the Assemblée nationale is based. The Secretary General must ensure that the amendments made are adequate and sufficient prior to proceeding with the registration. If the amendments are inadequate or insufficient, he must refuse the registration. In such event, he shall again inform the statutory authority which may proceed with new amendments.

20. At the request of at least five of its members, the Assemblée nationale shall proceed with the examination of any regulation in force, in the light of the criteria enumerated in section 19. If, in such event, the Assemblée nationale is of opinion that a regulation thus examined meets one or more of the criteria enumerated in that section, the Secretary General shall inform the relevant statutory authority.

The statutory authority shall then draw up, publish and deposit with the Secretary General, not later than the last day of the ensuing session, a draft amendment to the regulation which shall take into account the opinion of the Assemblée nationale, failing which, the provisions of the regulation contemplated by such opinion are null from that date. A notice to that effect shall then be published by the Secretary General in the *Gazette officielle du Québec*.

21. The fact that the provisions of this division have been or have not been applied in the examination by the Assemblée nationale of any draft regulation or any regulation already in force may in no case be used to set aside a request made to a court of justice to decide the nullity of a regulation.

22. The Secretary General of the Assemblée nationale shall keep a register of the regulations in force together with a cumulative index by subject-matter, by statutory authority and by the act or section of any act under which such regulations are in force. Such register shall be open to the public.

In addition, the Éditeur officiel shall publish a compilation of the regulations in force, consolidate the regulations that have been amended and provide at least twice yearly an updating service of the regulations together with the indexes drawn up by the Secretary General of the Assemblée nationale.

DIVISION VI

MISCELLANEOUS PROVISIONS

23. This act applies notwithstanding any incompatible provision of any act adopted prior to its coming into force. The same rule applies to the incompatible provisions of any act adopted by the Assemblée nationale after such date, subject, however, to any express derogation that might be inserted into such an act having the effect of overruling one or more of the provisions of this act.

24. The regulations in force at the time of the adoption of this act remain in force until they are rescinded or replaced, subject to section 20.

No regulation may be declared void because it contravenes sections 2, 6, 7, 9 and 16 in the year following the coming into force of this act.

25. The Secretary General of the Assemblée nationale shall prepare the cumulative register and the corresponding indexes for all the regulations already in force at the time of the coming into force of this act, not later than one year after such date.

The period prescribed in the first paragraph applies to the obligation imposed by section 22 on the Éditeur officiel respecting the regulations prior to such date.

26. This act comes into force on the day of its sanction.