

Excerpts from the Courts of Justice Act (R.S.Q., c. T-16)

CHAPTER I

THE CONSEIL DE LA MAGISTRATURE

DIVISION I ESTABLISHMENT

Constitution. **247.** A body, hereinafter called the “council”, is established under the name of Conseil de la magistrature.

1978, c. 19, s. 33.

Composition **248.** The council shall be composed of 15 members, namely,

- a) the chief judge of the Court of Québec who shall be the chairman of the council;
- b) the senior associate chief judge of the Court of Québec;
- c) the four associate chief judges of the Court of Québec;
- d) a president judge of a municipal court;
- d.1) one judge chosen among the persons exercising the functions of president of the Human Rights Tribunal, or chairman of the Professions Tribunal;
- e) two judges chosen among the judges of the Court of Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- f) one judge chosen among the judges of the Municipal Courts and appointed upon the recommendation of the Conférence des juges municipaux du Québec;
- g) two advocates appointed upon the recommendation of the Barreau du Québec;
- h) two persons who are neither judges nor advocates.

1978, c. 19, s. 33; 1986, c. 48, s. 4; 1986, c. 61, s. 47; 1987, c. 50, s. 8; 1988, c. 21, s. 53; 1991, c. 70, s. 4; 1995, c. 42, s. 42; 1998, c. 30, s. 40; 2002, c. 21, s. 48; 2001, c. 26, s. 172.

Appointment of members. **249.** The Government shall appoint the members of the council contemplated in paragraphs d, d.1 and e to h of section 248. To sit on the council, those members shall make the oath contained in Schedule III before the chief judge or the senior associate chief judge of the Court of Québec.

Vice-chairman. The vice-chairman of the council is elected by the council from among its members.

Term of office. The term of office of the members of the council appointed under the first paragraph is not more than three years; at the expiry of their term, these members remain in office until they are replaced or reappointed.

1978, c. 19, s. 33; 1988, c. 21, s. 54; 1989, c. 45, s. 6; 1995, c. 42, s. 43; 1998, c. 30, s. 41; 1999, c. 40, s. 324.

- Remuneration and expenses. **250.** The members of the council who are not judges are not entitled to any remuneration, except in such cases, on such conditions and to such extent as may be determined by the Government. They are, however, entitled to the reimbursement of expenses incurred in the performance of their duties, on the conditions and within the limits determined by the Government.
- Indemnity. The judges are entitled to the indemnity provided for in section 119.
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- 1978, c. 19, s. 33; 1988, c. 21, s. 55.
- Quorum. **251.** Eight members of the council, including the chairman or vice-chairman, are a quorum.
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- 1978, c. 19, s. 33; 1986, c. 48, s. 5.
- Meetings. **252.** The council meets as often as necessary, when convened by the chairman.
- Sittings in camera. It may sit in camera and hold its sittings at any place in Québec.
- Head office. The council has its head office in the territory of Ville de Québec or in the territory of Ville de Montréal, as the Government may decide.
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- 1978, c. 19, s. 33; 1996, c. 2, s. 985.
- Internal management. **253.** The council may make bylaws for its internal management or to establish committees and determine their functions.
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- 1978, c. 19, s. 33.
- Minutes. **254.** The minutes of the sittings of the council or of one of its committees are authentic if they are approved by the members of the council or of the committee, as the case may be; the same rule applies to documents or copies emanating from the council or forming part of its records if they are certified true by the chairman or the secretary.
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- 1978, c. 19, s. 33.
- Secretary. **255.** The chairman shall appoint the secretary of the council, for a five-year term, from among the advocates on the Roll of the Order of Advocates for at least 10 years who are members of the public service. The Government shall determine the salary, the employment benefits and other conditions of employment of the secretary.
- Leave. Upon being appointed, the secretary shall cease to be subject to the Public Service Act (chapter F-3.1.1); the person appointed to the office of secretary shall be on leave without pay for the duration of the five-year term.
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- 1978, c. 19, s. 33; 1978, c. 15, s. 140; 1983, c. 55, s. 161; 1989, c. 45, s. 7; 1997, c. 76, s. 2.
- Functions. **255.1.** The secretary of the council shall exercise the functions of the secretary on an exclusive basis, under the authority of the chairman.
- Oath. The secretary shall, before taking office, make the oath set out in Schedule III, before the chief judge of the Court of Québec.
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- 1989, c. 45, s. 7; 1997, c. 76, s. 2; 1999, c. 40, s. 324.

Expiry of term. **255.2.** At the expiry of the five-year term of office, the secretary shall remain in office until replaced or re-appointed.

1989, c. 45, s. 7; 1997, c. 76, s. 2.

Appointment. **255.3.** The members of the personnel of the council, other than the secretary, shall be appointed in accordance with the Public Service Act (chapter F-3.1.1).

1989, c. 45, s. 7; 1997, c. 76, s. 2; 2000, c. 8, s. 242.

DIVISION II

FUNCTIONS OF THE COUNCIL

Functions. **256.** The functions of the council are:

- a)* to organize, in accordance with Chapter II of this Part, refresher programmes for judges;
- b)* to adopt, in accordance with Chapter III of this Part, a judicial code of ethics;
- c)* to receive and examine any complaint lodged against a judge to whom Chapter III of this Part applies;
- d)* to promote the efficiency and uniformization of procedure before the courts;
- e)* to receive suggestions, recommendations and requests made to it regarding the administration of justice, to study them and to make the appropriate recommendations to the Minister of Justice;
- f)* to cooperate, in accordance with the law, with any body pursuing similar purposes outside Québec, and
- g)* to hear and decide appeals under section 112.

1978, c. 19, s. 33; 1988, c. 21, s. 56.

CHAPTER II

REFRESHER PROGRAMMES FOR JUDGES

Programmes. **257.** The council shall establish information, training or refresher programmes for the judges of the courts and presiding justices of the peace under the legislative authority of Québec and appointed by the Government.

1978, c. 19, s. 33; 2004, c. 12, s. 9.

Preparation. **258.** The council shall determine the needs, prepare the programmes and fix the terms and conditions of application; it may, for that purpose, act in cooperation in particular with the Conférence des juges du Québec, the Conférence des juges municipaux du Québec, the association representing presiding justices of the peace, the Barreau du Québec, the law faculties and the Ministère de la Justice.

1978, c. 19, s. 33; 1987, c. 50, s. 9; 2004, c. 12, s. 10.

Authorization for expenditures. **259.** The Government determines the amounts over which expenditures by the council in the application of this chapter require the approval of the Minister of Justice.

1978, c. 19, s. 33.

CHAPTER III

JUDICIAL ETHICS

DIVISION I GENERAL PROVISION

Applicability. **260.** This chapter applies to a judge appointed under this act.

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

1978, c. 19, s. 33; 1980, c. 11, s. 98; 1995, c. 42, s. 44; 2004, c. 12, s. 11.

DIVISION II CODE OF ETHICS

Code of ethics. **261.** The council shall, by regulation, adopt a judicial code of ethics.

Meeting of the judges. However, it must previously call a meeting of the judges to whom the code of ethics applies to consult them on the draft regulation.

Approval. A regulation made under this section is published in the Gazette officielle du Québec
Coming into force. at least thirty days before it is submitted to the approval of the Government. If it is so approved, it comes into force on the date of its publication in the Gazette officielle du Québec or on a later date fixed therein.

1978, c. 19, s. 33.

Contents. **262.** The code of ethics determines the rules of conduct and the duties of the judges towards the public, the parties to an action and the advocates, and it indicates in particular which acts or omissions are derogatory to the honour, dignity or integrity of the judiciary and the functions or activities that a judge may exercise without remuneration notwithstanding section 129 or 171 of this Act or section 45.1 of the Act respecting municipal courts (chapter C-72.01).

Special provisions. It may be stipulated in the code that certain of those provisions do not apply to judges of Municipal Courts, or special provisions may be established for those judges. For the purposes of this chapter, the rules set out in section 45 of the Act respecting municipal courts are deemed to be special provisions of the code of ethics applicable to municipal judges. The provisions of the code of ethics applicable to municipal judges may vary according to whether they apply to judges exercising their functions on a part-time basis or to judges exercising their functions on a full-time and exclusive basis. Special provisions for presiding justices of the peace may also be stipulated in the code.

1978, c. 19, s. 33; 1980, c. 11, s. 99; 1988, c. 21, s. 57; 1988, c. 74, s. 8; 1989, c. 52, s. 138; 1998, c. 30, s. 42; 2002, c. 21, s. 49; 2004, c. 12, s. 12.

DIVISION III

EXAMINATION OF COMPLAINTS

Object of complaints. **263.** The council receives and examines a complaint lodged by any person against a judge alleging that he has failed to comply with the code of ethics.

1978, c. 19, s. 33; 1988, c. 21, s. 58.

Contents. **264.** Any complaint is made in writing to the secretary of the council and states the facts with which the judge is charged and the other relevant circumstances.

1978, c. 19, s. 33.

Necessary information. **265.** The council shall examine the complaint; it may, for that purpose, require from any person such information as it may deem necessary and examine the relevant record, even if the record is confidential under the Youth Protection Act (chapter P-34.1).

Conflict. If the complaint is lodged by a member of the council, he cannot participate in the examination of the complaint by the council.

1978, c. 19, s. 33; 1986, c. 48, s. 6; 1988, c. 21, s. 59.

Copy to judge. **266.** The council shall forward a copy of the complaint to the judge; it may require an explanation from him.

1978, c. 19, s. 33.

Complaint not justified. **267.** If the council, after examining a complaint, establishes that it is not justified or that its nature and importance do not justify an inquiry, it shall notify the plaintiff and the judge of it and state its reasons therefore.

1978, c. 19, s. 33.

Inquiry. **268.** The council may, after examining a complaint, decide to make an inquiry. It must make an inquiry, however, if the complaint is lodged by the Minister of Justice or if the latter requests it pursuant to the third paragraph of section 93.1 or the third paragraph of section 168.

1978, c. 19, s. 33; 1988, c. 21, s. 60; 1990, c. 44, s. 24; 2004, c. 12, s. 13.

DIVISION IV INQUIRY

Committee. **269.** To conduct an inquiry on a complaint, the council establishes a committee consisting of five persons chosen from among its members and designates a chairman among them.

Quorum. Three persons are a quorum of the committee.

1978, c. 19, s. 33.

Composition. **269.1.** Notwithstanding the first paragraph of section 269, a committee of inquiry may be composed of members of the council and of persons who have previously been members of the council.

Composition. However, such a committee must include at least three members of the council, from whose number the committee shall designate a chairman, and not more than two previous council members.

1991, c. 70, s. 5.

Oath or solemn declaration. **269.2.** Any person who has previously been a member of the council and who is appointed to sit on a committee must, before taking up his functions, make the oath contained in Schedule III, before the chief judge or the senior associate chief judge of the Court of Québec.

1991, c. 70, s. 5; 1995, c. 42, s. 45; 1999, c. 40, s. 324.

Inquiry. **269.3.** A person who ceases to be a member of the council may continue to sit on a committee of inquiry established under section 269 or 269.1 in order to complete an inquiry undertaken by the committee.

1991, c. 70, s. 5.

Remuneration and indemnities. **269.4.** A person to whom either of section 269.2 and 269.3 applies is entitled for the time he is a member of a committee to no remuneration other than the remuneration and indemnities council members are entitled to receive under section 250.

1991, c. 70, s. 5.

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

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

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

2004, c. 12, s. 14.

Meetings. **270.** The committee meets as often as necessary, when convened by its chairman.

1978, c. 19, s. 33.

Copy of complaint, or request. **271.** The committee communicates to the judge a copy of the complaint or of the request of the Minister of Justice made pursuant to the third paragraph of section 93.1 or the third paragraph of section 168.

Calling by committee. Within thirty days after the communication of the complaint, the committee calls the judge concerned and the plaintiff; it also notifies the Minister of Justice, and the latter or his representative may intervene at the proof or hearing.

1978, c. 19, s. 33; 1988, c. 21, s. 61; 1990, c. 44, s. 24, 2004, c. 12, s. 15.

Hearing. **272.** The committee hears the parties, their attorneys and their witnesses.

Facts and testimonies. It may inquire into the relevant facts and call any person apt to testify on such facts.

Examination. The witnesses may be examined or cross-examined by the parties.

1978, c.19, s. 33.

Powers and immunity. **273.** The members of the committee enjoy, for the purposes of an inquiry, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

1978, c. 19, s. 33; 1992, c. 61, s. 621.

Prohibition. **273.1.** An advocate who is a judge of a Municipal Court may not act as a prosecutor for the application of this chapter.

1980, c. 11, s. 100.

Recusation of a member of the committee. **274.** A party to the inquiry may request the recusation of a member of the committee for one of the causes provided for in articles 234 and 235 of the Code of Civil Procedure (chapter C-25).

Obligation to declare. Furthermore, a member of the committee who is aware of a ground of recusation to which he is liable is bound to declare it.

1978, c. 19, s. 33.

Rules of procedure or practice. **275.** The committee may make rules of procedure or rules of practice for the conduct of an inquiry.

Orders of procedure. If necessary, the committee or one of its members makes the orders of procedure, based on the Code of Civil Procedure (chapter C-25), that are necessary for the carrying out of its duties.

1978, c. 19, s. 33.

Suspension of a judge. **276.** The council may suspend a judge for the duration of an inquiry on him.

1978, c. 19, s. 33.

Report of inquiry and recommendations. **277.** The committee submits the report of its inquiry and its recommendations to the council. It transmits that report to the Minister of Justice; in addition, it transmits a copy of its record of the inquiry in the case where the council makes the recommendation provided for in paragraph b of section 279.

1978, c. 19, s. 33.

Complaint not justified. **278.** If the report of the inquiry establishes that the complaint is not justified, the council notifies the judge concerned, the Minister of Justice and the plaintiff. That notice states the grounds on which it is based.

1978, c. 19, s. 33.

Complaint justified. **279.** If the report of the inquiry establishes that the complaint is justified, the council, according to the recommendations of the report of the inquiry,

- a) reprimands the judge; or
- b) recommends that the Minister of Justice and Attorney General file a motion with the Court of Appeal in accordance with section 95 or section 167.

Suspension. If it makes the recommendation provided for in paragraph b, the council suspends the judge for a period of thirty days.

1978, c. 19, s. 33; 1980, c. 11, s. 101; 1988, c. 21, s. 62; 1988, c. 74, s. 9, 2004, c.12, s. 16.

Motion to Court of Appeal. **280.** If the Minister of Justice and Attorney General, in accordance with section 95 or section 167, files a motion with the Court of Appeal, the judge is suspended from office until the report of the Court.

1978, c. 19, s. 33; 1988, c. 21, s. 63, 2004, c. 12, s. 17.

Services of an advocate. **281.** The council may retain the services of an advocate or of another expert to assist the committee in the conduct of its inquiry.

1978, c. 19, s. 33.

CHAPTER IV

MISCELLANEOUS PROVISIONS

Amounts required. **282.** The amounts required for the application of this part are taken out of the consolidated revenue fund.

1978, c. 19, s. 33.

PART VIII
FINAL PROVISIONS

Minister responsible. **282.1.** The Minister of Justice is responsible for the administration of this Act.

1988, c. 21, a. 64.

OTHER DISPOSITIONS FROM THE COURTS OF JUSTICE ACT

Disability. **93.1.** A judge suffering from a permanent physical or mental disability which, in the opinion of the Government, prevents the judge from effectively performing the duties. Unless the judge resumes judicial duties under the second paragraph, the judge is deemed to have ceased to hold office on the day preceding the day on which the judge satisfies any of the requirements set out in section 224.3, 228 or 246.3, as the case may be, for eligibility for a pension.

Resumption of judicial duties. If the judge recovers, the Government may permit the judge to resume judicial duties at the same court, even if all the posts in that court are already filled.

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

1990, c. 44, s. 4; 2001, c. 8, s. 3.

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

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

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

R. S. 1964, c. 20, s. 178; 1992, c. 61, s. 617; 2004, c. 12, s. 1.

Removal. **95.** The Government may remove a judge only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice.

R. S. 1964, c. 20, s. 86; 1988, c. 21, s. 30..

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

R.S. 1964, c. 20, s. 177; 1992, c. 61, s. 617; 2004, c. 12, s. 1.

Modification to a notice of appointment. **108.** Any modification to the notice of appointment of a judge concerning his place of residence shall be decided by the Government on the recommendation of the chief judge. The Government may make such a decision only if the period prescribed in section 112 for filing an appeal is expired or, where an appeal is filed, if the recommendation of the chief judge is confirmed.

R. S. 1964, c. 20, s. 100; 1965 (1st sess.), c. 17, s. 16; 1982, c. 17, s. 76; 1987, c. 50, s. 5; 1988, c. 21, s. 30; 1995, c. 42, s. 26.

Assignment to another division. **111.** The chief judge may, where the administration of justice so requires and after consultation with the associate chief judges concerned, assign a judge to another division after the judge concerned has been given the opportunity to present his views in that respect.

R. S. 1964, c. 20, s. 103; 1965 (1st sess.), c. 16, s. 21; 1965 (1st sess.), c. 17, s. 18; 1978, c. 19, s. 15; 1988, c. 21, s. 30; 1995, c. 42, s. 29.

Notice of decision. **112.** The chief judge who makes a recommendation under section 108 or a decision respecting the permanent assignment of a judge to another division under section 111 shall notify the judge concerned. The latter may, within fifteen days, appeal to the Conseil de la magistrature which may confirm or quash the recommendation or the decision of the chief judge.

R. S. 1964, c. 20, s. 104; 1974, c. 11, s. 30; 1977, c. 20, s. 138; 1978, c. 19, s. 16; 1986, c. 95, s. 334; 1988, c. 21, s. 30.

Exclusive office. **129.** Subject to the provisions of this subdivision, the office of judge shall be exclusive.

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

R. S. 1964, c. 20, s. 121; 1965 (1st sess.), c. 17, s. 2; 1978, c. 19, s. 25; 1988, c. 21, s. 30.

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

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

R. S. 1964, c. 20, s. 181; 1990, c. 4, s. 888; 2004, c. 12, s. 1.