

Questions raised over Quebec ethics bill flowing from Charbonneau Commission

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A bill introduced recently by the Quebec government that aims to fortify governance and ethics in professional corporations, better protect the public and encourage professionals to denounce reprehensible acts has received mixed reactions from disciplinary law experts.

Bill 98, legislation that acts on four of the 60 recommendations made by the Charbonneau Commission's report on corruption in the construction industry, will bolster the powers of the regulatory body that oversees Quebec's 46 professional corporations, including lawyers and accountants, will hand more discretionary powers to the syndic or ethics officer, and will under certain circumstances provide protection to whistleblowers.

If passed, the bill would allow the Office des professions to



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launch investigations without having to obtain prior approval from the minister of justice, enable it to determine through regulations the ethics standards and professional conduct applicable to directors of professional corporations and allow it to issue orders to boards of directors to take corrective measures.

Bill 98 would also make ethics

and professional conduct training mandatory for aspiring professionals and require professional corporations to offer the training to its members. It would also require boards of directors of a professional corporation to receive training on the role of a board, including training on governance and ethics.

The bill is a follow-up to the Charbonneau Commission which

raised awareness among different decision-making bodies over the importance of creating a culture of ethics and integrity in our society,” said Marie Cossette, an administrative law expert who heads the business integrity group for Lavery, de Billy in Quebec City. “The bill will not change attitudes but it is a step in the right direction. It fosters training and gives profes-

sional corporations powers to allow them to play an increased role in monitoring.”

The boards of directors of small professional corporations stand to benefit the most from training in governance and ethics, said Francis Gervais, a Montreal lawyer with Deveau, Gagné, Lefebvre, Tremblay & associés. Many directors in small corporations do not realize “what it means to be part of a board of directors” and fail to grasp the nature of their responsibilities, he said. “It’s not a private party or something that is added to one’s curriculum vitae,” said Gervais, a former president of the Quebec law society. “There is important work to be done when one is a member of a board of directors.”

More controversially, Bill 98 also grants syndics of professional corporations the power to confer immunity to professionals who

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come forward to report irregular situations even though they may have taken part in the reprehensible act. One must protect whistleblowers to foster integrity, said Cossette, adding that oftentimes the only way to discover wrongful acts is through whistleblowers. “By valuing whistleblowing and protecting whistleblowers, with appropriate mechanisms in place to avoid witch hunts, it will create a zero tolerance climate towards unethical conduct,” said Cossette.

While there is a need for whistleblowers to denounce objectionable acts, Gervais is uncomfortable that professionals may be granted full immunity for acts that they have may have had a hand in. Bill 98 doubles the size of fines that can be imposed on professionals to at least \$2,000 but not more than \$25,000 for each offence “to give the image

that we want to be severe” toward professionals yet provides an opportunity for professionals to obtain immunity, noted Gervais. “I am troubled by the notion that a person who participated in a reprehensible act could obtain full immunity,” added Gervais.

Rather than allowing professionals who have committed a wrongdoing to possibly have immunity, citizens who lodge a complaint before a syndic against a professional should benefit from immunity, said Martin Courville, a Montreal lawyer with De Chantal, D’Amour, Fortier Avocats. He has a case in which a citizen who lodged a complaint with a syndic against a professional is facing a lawsuit for harm to the professional’s reputation after the complaint was dismissed by the disciplinary council. “It appears we are going to be granting immunity to professionals

who participated in an infraction but it seems to me that consumers who lodge complaints that end up before a disciplinary committee deserve immunity,” said Courville.

Moreover, Bill 98 provides no guidance on what ethics officers should take into consideration before granting immunity, added Gervais. “The syndic is lord and master of the decision to grant immunity,” said Gervais. “But what are the criteria? Can the decision be revised? Can the syndic’s decision be appealed? Can the professional corporation review the ruling? This idea needs to be refined before it is put into application.”

Bill 98 will also contentiously empower syndics to request disciplinary councils to impose either a suspension or provisional restriction of the professional’s right to practise or use a reserved title in cases when proceedings are insti-

tuted for an offence punishable by five or more years of imprisonment. While ethics officers already had the power to request provisional revocation under certain circumstances when the protection of the public was at stake, the bill will make it easier for syndics to obtain their petition, said Cossette, who views this as a positive development.

Other lawyers specializing in disciplinary law are concerned with this provision. Montreal lawyer Jean-Claude Dubé says the bill will hand syndics, already vested with formidable powers, with even more to the detriment of professionals. “Syndics will hold all the cards while professionals will have little recourse,” said Dubé. Gervais concurs, adding that Bill 98 is silent about the presumption of innocence and the right to silence protected under s. 7 and s. 11(c) of the

Charter. “What am I going to do to defend myself before a syndic when nothing is mentioned in the bill over the presumption of innocence, the confidentiality of information, in camera proceedings if applicable, or whether decisions will be motivated? I hope hearings on the bill will bring clarifications,” said Gervais.

But Cossette counters that the presumption of innocence and the right to silence does not to be codified to exist. “It will be up to the professional to gauge his options and determine how he wants to ensure the respect of his rights,” said Cossette. “Perhaps the new provisions will be attacked constitutionally. Having said that, this is an issue about reasonableness in relation to the pursued objective of the legislator who wants to respond to the population’s expectation regarding regulatory matters.”