lavery
Lawyers

Coming into force of the Act to amend various legislation mainly with respect to admission to professions and the governance of the professional system (Bill 98)

July 26, 2017

On June 6, 2017, Bill 98, entitled *An Act to amend various legislation mainly with respect to admission to professions and the governance of the professional system* (the "Act") was passed by the National Assembly, then assented to by the Lieutenant Governor two days after. This statute, whose main provisions are already in force, modernizes the current professional regime, particularly by amending many provisions of the *Professional Code*[1] (the "Code"). As its title indicates, admission to the professions and the governance of the professional system are among the core elements of this long awaited reform. This bulletin consists in a short and non-exhaustive presentation of the main changes made to the regime.

Governance of professional orders

Firstly, the Act confers increased powers on the Office des professions du Québec, (the "**Office**") whose main function is to see that the various professional orders ensure the protection of the public. Thus, the Office has henceforth the power to require a professional order to take corrective and appropriate follow-up measures and to comply with any other measure determined by the Office, including supervisory or monitoring measures[2]. Moreover, while it previously had to act upon the Minister's request or obtain his or her authorization, the Office may henceforth undertake an inquiry on a professional order on its own initiative[3].

The Office is also required to determine, by regulation and after consultation with the Québec Interprofessional Council, the standards of ethics and professional conduct applicable to directors on a professional order's board of directors. The regulation adopted by the Office in this respect must, among other things, require the board of directors of the various professional orders to establish, in conformity with the standards determined by the Office, a code of ethics and professional conduct applicable to their members. Through this regulation, the Office must also establish the procedure governing examinations of and inquiries into conduct that may contravene these standards, prescribe appropriate penalties and designate the authorities that are to determine or impose such penalties[4].

The Act also expands the functions of the board of directors of the various professional orders,

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

whose role is considerably redefined with a focus on sound governance. While the board of directors was previously responsible for the general administration of the order's affairs, this role is henceforth transferred to the executive director of the order. For its part, the board will ensure the supervision and management of the order[5]. Furthermore, directors sitting on the board will be required to take training on the role of a professional order's board of directors as regards such matters as governance and ethics and gender equality as well as training on ethnocultural diversity management[6]. Some amendments pertaining to the eligibility criteria for directors and the composition of the board are also made for the purpose of ensuring more diversified and adequate representation of the public's interests[7].

Disciplinary process and penal offences

The powers of the professional orders' syndics are expanded. The syndic may henceforth, when of the opinion that proceedings instituted against a professional for an offence punishable by a term of imprisonment of five years or more are related to the practice of the profession, request that a disciplinary council immediately impose on the professional either a suspension or provisional restriction of the right to engage in professional activities or to use a title reserved to the members of the order[8]. In the same vein, a professional must notify the secretary of the professional order which he is a member of that he is the subject of a proceeding for an offence punishable by a term of imprisonment of five years or more[9].

Furthermore, the syndic has the power to grant immunity to a person who has sent information to him or her to the effect that a professional has committed an offence, when that person is also a party to the offence. Such immunity is valid against any complaint lodged with the disciplinary council in connection with the facts related to the commission of the offence[10].

The minimum and maximum amounts of the fines that may and sometimes must be imposed by disciplinary councils are increased, from $1,000 to $2,500 and $12,500 to $62,500 respectively[11]. In certain cases, the disciplinary council may also condemn the respondent who has been found guilty of a breach of ethics to pay a portion of the expenses incurred by the order to conduct an inquiry on the matter[12].

In the case of a professional found guilty of having engaged in a derogatory act of a sexual nature contrary to section 59.1 of the Code or an act of a similar nature set out in a code of ethics, the disciplinary council will henceforth be required to impose, in addition to a fine, striking off the roll for at least five years unless the respondent convinces the council that striking off for a shorter time would be justified in the circumstances[13]. Many other amendments pertaining to sexual misconduct are made in the Act[14], which shows that the legislator intends to further penalize this type of behaviour in the context of a "tolerance zero" perspective.

In penal matters, the Code is amended to distinguish, for the purpose of imposing fines, between natural persons and legal persons or other entities which are neither legal nor natural persons, with a view to imposing harsher punishment on those legal persons or other entities[15].

Moreover, the Act introduces a new penal offence mainly applicable to employers. Henceforth, every person who takes or threatens to take reprisals against a person on the grounds that that person has sent information to a syndic to the effect that a professional has committed an offence referred to in section 116 or that that person has cooperated in an inquiry is guilty of an offence. For the purposes of the application of this new section of the Code, the demotion, suspension, dismissal or transfer of a person or any other disciplinary or measure that adversely affects that person's employment or conditions of employment are presumed to be reprisals[16].

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Lastly, the Act modifies the Code to provide, for certain offences, a 3-year prescription period to undertake penal proceedings after the date on which the professional order becomes aware of the commission of the offence, without exceeding seven years from the date the offence was committed[17].

Admission to professions

The position of Commissioner for complaints concerning mechanisms for the recognition of professional competence is replaced with that of Commissioner for Admission to Professions[18]. The Access to Training Coordination Hub is also established. Its function is to draw up a status report on access to training, identify problems and issues related to training, identify statistical data collection needs, ensure collaboration between the professional orders, educational institutions and departments concerned, and propose solutions to the problems identified[19].

The Act also amends the Code so that ethics and professional conduct training becomes mandatory for applicants who are seeking admission to a profession, when their study program does not include training respecting these matters[20].

Conclusion

With some exceptions, most of the provision of the Act came into force on the date it was assented to, namely, June 8 last.

These provisions reflect a new philosophy for disciplinary standards and the approach of the bodies responsible for enforcing them. This upgrade with the trends in the area of governance was necessary as the mission of protecting the public continues to be ensured in an effective way in the light of the collective awakening for a reflection that is more ethical.

---

1. *Professional Code*, CQLR c. C-26.
2. *Professional Code*, sec. 12.
3. *Professional Code*, sec. 14.
4. *Professional Code*, sec. 12.0.1.
5. *Professional Code*, sec. 62.
6. *Professional Code*, sec. 62.0.1, para 4.
7. Particularly see sec. 78.1 of the *Professional Code*.
8. *Professional Code*, sec. 122.0.1.
9. *Professional Code*, sec. 59.3.
10. *Professional Code*, sec. 123.9.
11. *Professional Code*, sec. 156, al. 1, para c.
12. *Professional Code*, sec. 151, al. 5.
13. *Professional Code*, sec. 156, al. 2.
14. Particularly see sec. 160, 2nd paragraph and 161.0.1 of the *Professional Code*.
15. *Professional Code*, sec. 188, al. 1.
16. *Professional Code*, sec. 188.2.2.
17. *Professional Code*, sec. 189.1 and 189.0.1.
18. *Professional Code*, sec. 16.9 and seq.
19. *Professional Code*, sec. 16.24 and seq.
20. *Professional Code*, sec. 94, para i).

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.