



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Justice

Fairness

Respect

Impartiality

Transparency

**Brief by the Québec Ombudsman
presented to the
Committee on Institutions**

on Bill 98

*Act to amend various legislation mainly with respect to admission to professions
and the governance of the professional system*

Québec City, August 23, 2016

Mission of the Québec Ombudsman

The Québec Ombudsman ensures that the rights of citizens are upheld by intervening with regard to Québec government departments and agencies and the various bodies within the health and social services network to remedy situations that are prejudicial to a person or group of persons. Appointed by the elected members from all political parties and reporting to the National Assembly, the Québec Ombudsman acts independently and impartially, whether an intervention is undertaken in response to a complaint or series of complaints or on the institution's own initiative.

Respect of citizens and their rights and prevention of prejudicial situations are at the heart of the Québec Ombudsman's mission. Its preventive role consists primarily of the systemic investigation of situations detrimental to a large number of citizens.

Pursuant to the powers conferred upon it, it can propose amendments to acts and regulations and changes to directives and administrative policies with a view to improving them in the best interest of the people concerned.

This document is available online at our website (<http://www.protecteurducitoyen.qc.ca>), in the **Investigations & Recommendations** section, under **Reactions to bills and draft regulations**.

When the masculine form is used, it is intended to be gender-inclusive.

© Protecteur du citoyen, 2016

Reproduction, in whole or in part, is permitted with acknowledgement of the source.

Table of contents

Introduction.....	1
1 The challenge of dovetailing the components of the professional system.....	1
2 The challenge of trust	3
3 Two recommendations in order to strengthen protection of the public	7
Conclusion.....	10

Introduction

- 1 The Québec Ombudsman's primary concern is public protection, a concern it has in common with professional orders.
- 2 More than 40 years after the passage of umbrella legislation regarding the professions (the *Professional Code*)¹, the professional system faces new challenges, the first one being preserving public trust in the disciplinary justice system. It therefore makes sense that the Office des professions du Québec (Office) is proactive and vigilant at a time when the *Professional Code* is being reformed, notably in order to strengthen the Office's monitoring, supervisory and investigative powers.
- 3 The Québec Ombudsman also feels that public protection must be heightened and the operation of professional orders optimized. This is why in general it subscribes to the amendments to the *Professional Code* proposed in Bill 98, *Act to amend various legislation mainly with respect to admission to professions and the governance of the professional system*.
- 4 The Québec Ombudsman analyzed the proposed amendments aimed at improving governance and ethical practices within the professional system in light of the two challenges that the system faces today — ensuring that each component of the professional system completes and strengthens the other components, and enhancing trust in the discipline and professional justice system.

1 The challenge of dovetailing the components of the professional system

- 5 The Québec Ombudsman already shared some of its thoughts about the contemporary challenges facing Québec's professional system at a symposium organized by the Interprofessional Council of Québec in 2013.² This brief reiterates and builds on some of the elements presented on this occasion. From the outset, it postulates that to enable Québec's professional system to continue to grow and adapt so as to better carry out its core mission (public protection), its main challenge is to ensure that each component of the professional system completes and strengthens the other components.
- 6 Several measures proposed in Bill 98 specify the roles of the various components of Québec's professional system and are aimed at enhancing professional system governance.
- 7 Particularly regarding the Office, two of Bill 98's proposals constitute gains, namely, those that change the relationship between the Office and professional orders by having the *Professional Code* specify, on the one hand, that henceforth the professional orders must collaborate with the Office in its monitoring role, and on the other, that the Office may require corrective measures when warranted in order to protect the public.³

¹ *Professional Code*, CQLR, c. C-26.

² 4th Symposium of the Québec Interprofessional Council, February 15, 2013, Montréal: <https://protecteurducitoyen.qc.ca/fr/a-propos/discours/4e-colloque-du-forum-des-syndics-du-conseil-interprofessionnel-du-quebec-1>. (In French)

³ Bill 98, section 4, amending section 12 of the *Professional Code*.

- 8 The Québec Ombudsman also subscribes to the proposal to allow a professional order's syndic, despite its oath of confidentiality, to exchange useful information or documents with other professional order syndics. The elements that may be disclosed are circumscribed and the proposal specifically provides for the exclusion of information protected by professional secrecy between an advocate or notary and that person's client.⁴ Consequently, this is a measure which should make certain inquiries more effective by reinforcing collaboration among orders and allowing a syndic to inform its counterpart about the appropriateness of examining a given subject or conducting an inquiry.
- 9 The additional powers conferred on the Office should make it possible to strengthen its detection and intervention capability and its corrective actions. Over time, the lack of such powers has prevented interventions and disciplinary penalties within various professional orders, even though it would have been in the greater common interest of public protection.
- 10 Bill 98 proposes changes to the composition of the Office by increasing the number of members from 5 to 7 and by reducing the chair's renewable term of office from 10 years to 5 years.⁵ The Québec Ombudsman notes with satisfaction that the increase in the number of Office members means that there will be another public representative within the professional system's central body (from one representative to two representatives). The presence of public representatives within bodies with powers to monitor and supervise is such as to improve the credibility of the mechanisms aimed at public protection, provided these representatives are qualified.
- 11 In terms of ethics and professional conduct, there are two significant proposals in Bill 98, mandatory training in ethics and professional conduct for candidates to the profession,⁶ and the obligation of members of boards of directors of orders to receive training on their role,⁷ notably regarding governance and ethics.
- 12 These measures are part of a trend seen in recent years whereby there has been tightening of the legal framework in matters of the ethics and professional conduct governing the various roles or functions within the professional system. The members of the Office and all professionals are already subject to a code of conduct. Furthermore, Bill 17, Act to amend the Professional Code with respect to disciplinary justice, assented to in 2013,⁸ provides for the imposition of a code of conduct for the members and chairs of disciplinary councils. Bill 98 now proposes making the directors on the boards of directors of professional orders subject to distinct standards of ethics and professional conduct.⁹
- 13 Bill 98's proposals concerning access to professions and professional development are also appropriate because they improve on the current situation.
- 14 The Bill proposes broadening the powers of the Commissioner for complaints concerning mechanisms for the recognition of professional competence (Commissioner).¹⁰ Currently, the Commissioner is mandated to review and examine only the complaints lodged by a person against a professional order which concern operation of the

⁴ Bill 98, third paragraph of section 63, amending section 124 of the *Professional Code*.

⁵ Bill 98, section 1, amending section 4 of the *Professional Code*.

⁶ Bill 98, third paragraph of section 48, amending section 94 of the *Professional Code*.

⁷ Bill 98, section 29, introducing subparagraph 4 of section 62.0.1 of the *Professional Code*.

⁸ 2013, c. 12.

⁹ Bill 98, second paragraph of section 5(2).

¹⁰ Bill 98, sections 10 to 21.

mechanisms for the recognition of professional competence.¹¹ Bill 98 proposes that the Commissioner may receive and examine any complaint lodged by a person about admission to a profession, and monitor the operation of any process or activity relating to admission to a profession.¹²

- 15 The Commissioner's powers to monitor, investigate, make recommendations and issue opinions will therefore extend to cover government departments, agencies, educational institutions, and anyone involved in admission to a profession. The Québec Ombudsman notes that broadening the Commissioner's areas of jurisdiction enables an overview of the process of admission to professions. It also expresses the expectation that the Commissioner's new powers be exercised with rigour and celerity and that they enable adequate intervention with all the players concerned, especially in the case of immigrants, for whom successful training and social and occupational integration are genuine challenges.
- 16 In terms of access to training, the Commissioner will be entrusted with monitoring the development of training and, when necessary, make recommendations to the Access to Training Coordination Hub. Already in place and chaired by the president of the Office, this hub will become institutionalized under Bill 98.¹³ Its main function will be to draw up a status report on access to training, identify problems and issues related to training, ensure collaboration between the professional orders, educational institutions and departments concerned, and propose solutions to the problems identified.¹⁴ It could, among other things, make recommendations on access to training to a department, body, professional order, educational institution or any other person.¹⁵ The Québec Ombudsman feels that these amendments are gains in response to professionals' ongoing need to upgrade their qualifications and modernize their practice.

2 The challenge of trust

- 17 In 2013, at the Interprofessional Council of Québec's syndics forum symposium, the Québec Ombudsman dealt head on with the question of the credibility of the disciplinary process, pointing out that citizens perceive the professional system as one that is "fundamentally corporatist, hermetic, if not secretive, especially in the exercise of its jurisdictional functions and the functions of the syndic."¹⁶ Since then, a survey commissioned by the Council confirmed that only 10% of the population believes that the mission of professional orders is to protect the public and not their members.¹⁷ Furthermore, the Office notes that public trust has declined slightly.¹⁸
- 18 In short, since Québec's professional system is basically founded on self-regulation (peer oversight), the challenge for the system is necessarily to enhance and foster public trust. In the Québec Ombudsman's opinion, restoring this trust hinges mainly on measures aimed at the disciplinary process. In this regard, two proposals contained in Bill 98 deserve closer consideration, respectively, suspension or provisional restriction of the

¹¹ Section 16.10 of the *Professional Code*.

¹² Section. 16.10 of the *Professional Code*, as amended by section 12 of Bill 98.

¹³ Section 16.24 and following of the *Professional Code*, introduced by section 21 of Bill 98.

¹⁴ Section 16.24 of the *Professional Code*, introduced by section 21 of Bill 98.

¹⁵ Section 16.27 of the *Professional Code*, introduced by section 21 of Bill 98.

¹⁶ See note 2 above.

¹⁷ *Semaine des professionnels 2015. Sondage CROP : Confiance des Québécois envers les ordres professionnels*, Interprofessional Council of Québec : <https://professions-quebec.org/publications/>.

¹⁸ *Sommaire du Plan stratégique 2015-2019*, Office des professions du Québec, p. 12.

right of a member of an order to engage in professional activities, and granting of disciplinary immunity to whistleblowers. Under these two provisions, syndics are given two additional powers.

SUSPENSION OR PROVISIONAL RESTRICTION OF THE RIGHT TO ENGAGE IN PROFESSIONAL ACTIVITIES

- 19 Bill 98 proposes that, under certain conditions, syndics be empowered to request suspension or provisional restriction of the right of a member of an order to engage in professional activities.¹⁹
- 20 More specifically, a syndic may “when proceedings are instituted against a professional for an offence punishable by a term of imprisonment of five years or more, 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.”²⁰ Furthermore, the Bill provides that the syndic’s request must be heard and decided as a matter of pressing importance and that the order of the disciplinary council becomes enforceable on being served on the professional concerned.²¹
- 21 In other words, the Bill proposes a reaction by the disciplinary justice system to an indictment for a serious offense purportedly committed by a professional, pending the outcome of criminal or penal proceedings. The Québec Ombudsman has taken into account the fact that the Director of Criminal and Penal Prosecutions (DPCP) only files a suit when the organization is reasonably convinced of being able to establish guilt.
- 22 The *Professional Code* already stipulates that certain acts are “derogatory to the dignity of the profession.” The acts in question, especially collusion, corruption, malfeasance, breach of trust or influence peddling,²² are obviously such as to undermine public trust. Another provision of the *Professional Code* specifies that improper gestures or remarks of a sexual nature by a professional constitute an act derogatory to the dignity of the person’s profession.²³ In short, serious behavioural breaches that are such as to jeopardize the well-being of a client or professional service user are likely to lead to disciplinary penalties.
- 23 The *Professional Code* already empowers the disciplinary council to impose on a professional “restriction or suspension of his [or her] right to engage in professional activities,”²⁴ but these penalties can only be applied further to a guilty verdict for an offence under the Code.²⁵ The possibility of imposing such penalties in order to prevent other serious offences must also be subject to supervision.

¹⁹ Section 122.0.1 of the *Professional Code*, as introduced by section 61 of Bill 98.

²⁰ *Idem*.

²¹ Sections 122.0.2 and 122.0.3 of the *Professional Code*, as introduced by section 61 of Bill 98.

²² *Professional Code*, section 59.1.1.

²³ *Professional Code*, section. 59.1.

²⁴ *Professional Code*, subparagraph (g) of the first paragraph of section 156.

²⁵ *Professional Code*, first paragraph of section 156. The Québec Ombudsman notes that a similar measure has been in force since 2012 in the *Act respecting elections and referendums in municipalities* (CQLR c. E-2.2, section. 312.1): “The Superior Court may, on an application, if it considers it warranted in the public interest, declare provisionally incapable to perform any duty of office a member of the council of a municipality against whom proceedings have been brought for an offence under an Act of the Parliament of Québec or Canada that is punishable by a term of imprisonment of two years or more.”

- 24 On this subject, the Québec Ombudsman notes that Bill 98 provides for a first crucial, though very broad, guideline, since the disciplinary council cannot make an order unless it considers that the protection of the public requires it. An additional guideline provides that in rendering its decision, the disciplinary council must consider how the alleged offence is related to the practice of the profession or how it affects the honour or dignity of the profession.²⁶
- 25 The new power to request suspension or temporary restriction gives the disciplinary justice system's main players considerable leeway. Reasonable exercise of this power hinges in particular on the independence of the disciplinary justice system and the balance between the rights of professionals and the protection of the public.
- 26 In this context, the substantive issue is the following: to what extent can public protection and the rules of natural justice applicable to the disciplinary process be aligned? All things considered, the Québec Ombudsman sees the guidelines provided for in Bill 98 as affording reasonable checks regarding the public protection requirement. However, it would like to make the following three comments:
- ▶ First, Bill 98 prescribes a variety of penalties that a disciplinary council may impose further to a request from a syndic. Given the impact of the prescribed penalties on a professional's career, the Québec Ombudsman feels that the council should use a graduated scale of penalties and that the most severe (provisional suspension of the right to engage in professional activities) must be considered only when less coercive means (imposition of conditions for engaging in professional activities or provisional restriction) are deemed insufficient.
 - ▶ Secondly, the new discretionary power to fast-track provisional penalties is of great importance and alone justifies a distinct framework for professional conduct for the players who exercise this discretionary power. In this regard, the Québec Ombudsman notes that the last amendment to the *Professional Code*,²⁷ in 2015, will, once it is in force, make disciplinary council chairs subject to the jurisdiction of the Conseil de la justice administrative as regards the application of the code of conduct specific to them.²⁸ On the other hand, syndics are not subject to any distinct framework for professional ethics regarding their functions, and this is addressed in a recommendation in this brief.²⁹
 - ▶ Thirdly, given the lengthy wait times within the justice system, the Québec Ombudsman also feels that the application of any of the provisional penalties prescribed in Bill 98 would be such as to dampen accused professionals' interest in using stall tactics to delay the judicial process. In this respect, the proposal under consideration, which the Québec Ombudsman subscribes to, contributes to the achievement of the goal of strengthening public protection and the efficiency of the disciplinary justice system. However, it emphasizes that this measure alone will not be sufficient to decrease the long wait times associated with disciplinary justice. Consequently, the implementation of other measures to speed up disciplinary justice would be fitting.³⁰

²⁶ Section 122.0.3 of the *Professional Code*, as introduced by section 61 of Bill 98.

²⁷ 2015, c. 26, *Act mainly to make the administration of justice more efficient and fines for minors more deterrent* (Bill 51).

²⁸ *Professional Code*, section 115.1, as introduced by the *Act mainly to make the administration of justice more efficient and fines for minors more deterrent*, 2015, c. 26, section 20. This section was not in force at the time this brief was being drafted.

²⁹ See recommendation 1 by the Québec Ombudsman (section 3 of this brief).

³⁰ The Québec Ombudsman acknowledged the supervisory measures added to the *Professional Code* in 2013 when Bill 17, *Act to amend the Professional Code with respect to disciplinary justice*,

DISCIPLINARY IMMUNITY FOR WHISTLEBLOWERS

- 27 Another power that will be given to the syndics of professional orders will be the ability to grant immunity from any complaint with the disciplinary council to a professional party to the offence who discloses information concerning a breach of ethics or professional conduct. Bill 98 proposes that “where the person who has sent information to the syndic to the effect that a professional has committed an offence is a professional who is himself party to the offence a syndic may, if the syndic considers it warranted by the circumstances, grant that person immunity from any complaint with the disciplinary council in connection with the facts related to the commission of the offence.”³¹
- 28 The Québec Ombudsman is particularly sensitive to the issue of protecting whistleblowers given the role it may be called on to play in handling the disclosure of wrongdoing, according to the provisions of Bill 87,³² which is under consideration.
- 29 The power to grant immunity is a considerable one. The Québec Ombudsman feels however that under Bill 98, it will be sufficiently circumscribed. Immunity will be granted to the informers involved in an offence only for complaints within the jurisdiction of the disciplinary council and in connection with the same facts.
- 30 Respecting the independence of all professional order syndics, Bill 98 circumscribes the discretionary power granted to them. In this regard, the Québec Ombudsman notes with satisfaction that the Bill provides for a set of criteria that puts public protection first and that the criteria are not exhaustive.
- 31 Before granting immunity, a syndic must “consider such factors as the protection of the public, the importance of maintaining public trust in the members of the order, the nature and seriousness of the offence, the importance of the alleged facts for the conduct of the inquiry and their reliability, the professional’s collaboration during the inquiry and the extent of the professional’s participation in the offence.”³³ As the Québec Ombudsman sees it, these criteria seem reasonable and sufficient to contribute to greater protection of the public.
- 32 The Québec Ombudsman analyzed this provision of Bill 98 by taking into account a similar measure proposed in Bill 107,³⁴ which is also under consideration. To combat corruption more effectively, one of the things that Bill 107 proposes is that the Director of Criminal and Penal Prosecutions be empowered to grant immunity from prosecution to cooperating witnesses. This new power of the Director would include the possibility to, in particular, “terminate the hearing of a complaint against the witness before the disciplinary council of a professional order.”³⁵ It is also stipulated that “to terminate the hearing of a complaint before a disciplinary council, the Director must notify a notice to that effect to the complainant and the secretary of the disciplinary council.”³⁶ Read as a whole, the provisions of Bills 98 and 107 seem to give precedence to the Director’s

was assented to. It was aimed at fostering the celerity of the decisional process for syndics and disciplinary councils alike.

³¹ First paragraph of section 123.9 of the *Professional Code*, as introduced by section 62 of Bill 98.

³² Bill 87, *Act to facilitate the disclosure of wrongdoings within public bodies*.

³³ Second paragraph of section 123.9 of the *Professional Code*, as introduced by section 62 of Bill 98.

³⁴ Bill 107, *Act to increase the jurisdiction and independence of the Anti-Corruption Commissioner and the Bureau des enquêtes indépendantes and expand the power of the Director of Criminal and Penal Prosecutions to grant certain benefits to cooperating witnesses*.

³⁵ Section 24.1 of the *Act respecting the Director of Criminal and Penal Prosecutions*, CQLR, c. D-9.1.1, as introduced by section 38 of Bill 107.

³⁶ Section 24.2 of the *Act respecting the Director of Criminal and Penal Prosecutions*, CQLR, c. D-9.1.1, as introduced by section 38 of Bill 107.

decision, regardless of the will of the syndic. To what extent will the Director also take into consideration the syndic's criteria, the first being public protection? While aware of the imperatives of the legislative process and the independent consideration of these Bills, the Québec Ombudsman wonders about the consistency and necessary fit between the provisions in order to prevent possible unwanted effects. This issue was also the subject of its deliberations surrounding consideration of Bill 107.

3 Two recommendations in order to strengthen protection of the public

- 33 The Québec Ombudsman recommends that the Committee introduce measures complementary to those provided for in Bill 98 which, in its opinion, could contribute to the finetuning of Québec's professional system. These measures specifically concern professional order syndics.

CONTROL OF THE PROFESSIONAL CONDUCT OF PROFESSIONAL ORDER SYNDICS

- 34 The connection between syndics and the public is not inconsiderable; every year, 8,000 to 10,000 inquiry files are opened by the syndics across the spectrum. The Québec Ombudsman calculated that more than 95% of these inquiries do not lead to a complaint before the disciplinary councils.³⁷ In conducting inquiries that involve users of professional services as well as their peers, syndics are located at the interface of the professional system and the public. As plaintiffs, syndics are responsible for deciding whether or not to bring complaints before disciplinary councils further to reports about their peers.
- 35 The syndics of professional orders must always have the independence needed to exercise their particular mandate. Their role is decisive in strengthening public trust in the professional system. Being members of their professional order, they are bound by their profession's code of conduct. However, the Québec Ombudsman has noted that there is no specific standard of ethics or professional conduct for syndics themselves. For the reasons given below, the Québec Ombudsman believes that syndics should be subject to standards of ethics and professional conduct specific to them.
- 36 Supervision of the professional conduct of syndics is warranted first of all because under Bill 98 they are granted two additional powers other than those they already have, namely, that of granting immunity to whistleblowers, and that of requesting the suspension or provisional restriction of a professional accused of a serious offence to engage in professional activities. Prevention requires proactive management. This proposed supervision is part of the professional system's trend to tighten supervision of the players whose functions are not directly related to the exercise of a profession. Note that Bill 17, assented to in 2013, provided for a code of professional conduct for all chairs and members of the disciplinary councils of professional orders.³⁸ As for Bill 98, it similarly proposes making the directors of all professional orders subject to distinct standards of conduct.

³⁷ *Rapport annuel de gestion 2014-2015* of the Office des professions du Québec, p. 62.

³⁸ 2013, c. 12, section 5, introducing section 117.2 of the *Professional Code*. So far, the government has not enacted the code of ethics stipulated in this provision.

37 The Québec Ombudsman also feels that pursuant to the Office's role of overseeing professional orders,³⁹ the Office is the body with the best vantage point to ensure enforcement of a code of ethics applicable to syndics. Bill 98 introduces more detail about the Office's supervisory function by adding to the description of its mandate that it "may, if it considers it necessary for the protection of the public, require an order... to comply with any measure determined by the Office, including supervisory or monitoring measures."⁴⁰

38 Consequently, the Québec Ombudsman is making the following recommendation.

Recommendation:

Concerning the standards of ethics and professional conduct applicable to the syndics of professional orders.

Whereas:

The syndics of professional orders have extensive independence and powers;

The additional powers conferred on the syndics of professional orders by Bill 98 concern the protection of the public;

Since 2013 the *Professional Code* has provided that the chairs and members of disciplinary councils are subject to a code of professional conduct and that Bill 98 proposes making the directors of professional orders subject to distinct standards of ethics and professional conduct;

Public protection must include a preventive component;

The Office des professions du Québec's role is to supervise professional orders.

The Québec Ombudsman recommends:

R-1 That Bill 98 be amended to provide that the Office des professions du Québec determine standards of ethics and professional conduct applicable to the members of the offices of the syndics of professional orders and that it be designated the authority responsible for conducting inquiries should these standards be breached.

STANDARDIZATION OF THE PRESCRIPTIVE DEADLINES FOR CERTAIN PENAL PROCEEDINGS

39 Section 189.1 of the *Professional Code* provides that a professional order may "institute penal proceedings for an offence under section 187.18 or 188.2.1."⁴¹ The offences in question are mainly those designated acts derogatory to the dignity of the profession, in other words, acts involving collusion, corruption, malfeasance, breach of trust or influence peddling.

40 In response to Recommendation 7 of the report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, Bill 98 proposes amending the *Professional Code* to set prescriptive deadlines for such offences. The proposed amendment stipulates that "the proceedings are prescribed

³⁹ CQLR, c. C-26, first paragraph of section 12: "The function of the Office shall be to see that each order ensures the protection of the public."

⁴⁰ Bill 98, third paragraph of section 4(3), amending section 12 of the *Professional Code*.

⁴¹ *Professional Code*, section 189.1.

three years after the date on which the prosecutor becomes aware of the commission of the offence. However, no proceedings may be brought if more than seven years have elapsed since the commission of the offence."⁴²

- 41 These prescriptive deadlines are consistent with those included in several contemporary bills.⁴³ Harmonization of these deadlines seems fitting because the law grants professional orders sufficient time to bring proceedings concerning all the offences provided for in the section concerned. In addition, this will not contribute to unduly lengthening disciplinary justice system wait times. The Québec Ombudsman therefore subscribes to the proposed amendment.
- 42 However, it has noted that the prescriptive deadlines differ for proceedings brought by professional orders concerning the offences prescribed in section 189.0.1 of the *Professional Code* and that have to do mainly with unlawful practice of a profession and unauthorized use of a title reserved to members of a professional order. For these offences, which also have an incidence on public protection, penal proceedings "are prescribed one year after the prosecutor becomes aware of the commission of the offence. However, no proceedings may be brought if more than five years have elapsed since the commission of the offence."⁴⁴
- 43 In the opinion of the Québec Ombudsman, it is important that the same prescriptive delays be applied uniformly to all offences with an incidence on public protection. Such standardization would give a professional order enough time, after becoming aware of the commission of an offence, to put together a case and undertake proceedings.
- 44 Consequently, the Québec Ombudsman is making the following recommendation.

Recommendation:

Concerning the prescriptive deadlines for certain penal proceedings.

Whereas:

Bill 98 proposes setting deadlines for acts derogatory to the dignity of the profession;

The unlawful practice of a profession and unauthorized use of a title reserved to members of a professional order are offences that have an incidence on public protection;

Standardization of all the prescriptive deadlines provided for in Chapter VII (Penal Provisions) of the *Professional Code* would ensure better public protection;

Several contemporary bills provide that penal proceedings are prescribed three years after the date on which the prosecutor becomes aware of the commission of the offence and that no proceedings may be brought if more than seven years have elapsed since the commission of the offence.

⁴² Bill 98, section 74, amending section 189.1 of the *Professional Code*.

⁴³ Notably Bill 107, *Act to increase the jurisdiction and independence of the Commissioner and the Bureau des enquêtes indépendantes and expand the power of the Director of Penal Prosecutions to grant certain benefits to cooperating witnesses* and Bill 108, *Act to facilitate the oversight of public bodies' contracts and to establish the Autorité des marchés publics*.

⁴⁴ CQLR, c. C-26, section 189.0.1.

The Québec Ombudsman recommends:

R-2 That Bill 98 be amended so that prescriptive deadlines are set uniformly for all offences mentioned in Chapter VII (Penal Provisions) and that for all offences, penal proceedings are mentioned three years after the date on which the prosecutor becomes aware of the commission of the offence and that no proceedings may be brought if more than seven years have elapsed since the commission of the offence.

Conclusion

- 45 In general, the Québec Ombudsman subscribes to the amendments to the *Professional Code* proposed in Bill 98 and whose purpose is to enhance the efficiency of the Office des professions du Québec and professional orders' ability to ensure public protection.
- 46 The Québec Ombudsman has made two recommendations which, in its opinion, are such as to contribute to fuller achievement of the Bill's core goal — strengthening the governance of the professional system so as to ensure greater public protection.

www.protecteurducitoyen.qc.ca



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Québec City Office
525, boul. René-Lévesque Est
Bureau 1.25
Québec (Québec) G1R 5Y4
Phone: **(418) 643-2688**

Montréal Office
1080, côte du Beaver Hall
10^e étage, bureau 1000
Montréal (Québec) H2Z 1S8
Phone: **(514) 873-2032**

Toll-free: **1-800-463-5070**

Fax: **1-866-902-7130**

Email: protecteur@protecteurducitoyen.qc.ca