

May 29, 2018

Madam Rita de Santis
Chair
Committee on Culture and Education
Hôtel du Parlement
1^{er} étage, Bureau 1.119
1045, rue des Parlementaires
Québec (Québec) G1A 1A4

Subject: Bill 185 – Act to defer the next general school election and to allow the Government to provide for the use of a remote voting method

Madam Chair:

Within the framework of its mandate, the Québec Ombudsman reviews all bills and draft regulations introduced in the National Assembly or published in the *Gazette officielle du Québec*. When it deems necessary, it intervenes under section 27.3 of its constituting act, which empowers it to call the attention of the government or a chief executive officer of a public body to legislative, regulatory or administrative reforms it deems to be in the public interest.

With this aim in mind, I examined Bill 185, *Act to defer the next general school election and to allow the Government to provide for the use of a remote voting method*, introduced by the Minister of Education, Recreation and Sports on May 15, 2018.

First, I must point out that my intervention only concerns section 5 of the Bill, namely, the possibility of the Government to provide for the use of a remote voting method within the framework of the adoption of a prospective regulation.¹

While it is unusual to do so while a bill is under consideration, I am taking the liberty of immediately expressing my concern about the content of the regulation that could stem from the Bill, because, unfortunately, it will not be submitted for consultation. The third paragraph of section 5 of the Bill removes the obligation to prepublish provided for in the *Regulations Act*.²

More specifically, I am concerned about the possibility that detainees in provincial correctional facilities may not be able to exercise their right to vote in school elections.

The *Act respecting school elections*³ does not expressly exclude detainees from the definition of a voter. Therefore, detainees have the right to vote in these elections. That said, even if they

¹ The first paragraph of section 5 of the Bill provides that the "Government may, by regulation, after consulting the Chief Electoral Officer, allow the use of a remote voting method for the general school election of 1 November 2020 and determine the applicable conditions and procedure."

² RLRQ, c. R-18.1. As the Québec Ombudsman has already said in commenting about several other bills, the introduction of provisions concerning non-publication of draft regulations is a breach of the principle of the prepublication of regulations and the transparency of government action. Non-publication limits citizens' right to voice their opinion on these regulations and propose amendments that improve them.

³ CQLR, c. E-2.3, s. 12.

maintain their voter status, in practice they cannot vote because no provisions have been made for special voting measures for them.

Considering the importance of respecting basic rights and promoting the exercise of the right to vote, I feel that it is necessary to provide for the possibility for detainees to vote in school elections. To that end, the regulation that the Government could make pursuant to the first paragraph of section 5 to allow for the use of a remote voting method should provide for the procedure for this exercise for detainees.

In this regard, the regulation could include provisions inspired by those of the *Election Act*,⁴ which provide that detainees in provincial and federal correctional facilities can vote in provincial general elections, pursuant to the procedure for exercising the right to vote provided for therein.

As I understand it, the Bill and the regulation stemming from it would only apply to the November 1, 2020 elections. I am aware that this is a first step, a pilot project to some extent, but I must nonetheless insist that the conditions and procedure for a voting method that enables detainees to vote continue beyond that date.

In light of the preceding, the Québec Ombudsman recommends:

R-1 That the regulation allowing the use of a remote voting method that will be enacted pursuant to the first paragraph of section 5 of the Bill provide for the conditions and procedure needed for the effective exercise of the right to vote of detainees in correctional facilities.

Thank you for your attention to this letter.

Yours respectfully,

Marie Rinfret
Ombudsperson

c.c.: Mr. Sébastien Proulx, Minister of Education, Recreation and Sports
Mr. Martin Coiteux, Minister of Public Security
Mr. Jean-Marc Fournier, Government House Leader
Mr. Pascal Bérubé, Official Opposition House Leader
Mr. François Bonnardel, Leader of the Second Opposition Group
Ms. Manon Massé, MNA for Sainte-Marie–Saint-Jacques
Mr. Pierre Reid, Chief Electoral Officer
Ms. Sylvie Barcelo, Deputy Minister of Education and Higher Education
Ms. Liette Larrivée, Deputy Minister of Public Security
Ms. Louise Cameron, Secretary, Committee on Culture and Education
Ms. Carolyne Paquette, Secretary, Committee on Institutions

⁴ CQLR, c. E-3.3, ss. 294 and following.