



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 38

**An Act to amend the Act respecting
educational institutions at the university
level and the Act respecting the Université
du Québec with respect to governance**

Introduction

**Introduced by
Madam Michelle Courchesne
Minister of Education, Recreation and
Sports**

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EXPLANATORY NOTES

The object of this bill is to establish principles of sound governance as regards the administration of university-level

institutions. These principles affect, in particular, the composition, performance and responsibilities of an institution's board of directors.

Under the bill, at least 60% of the board members must qualify as independent directors and at least 25% of them must be chosen from the university community. Moreover, the board must include an equal number of women and men.

The bill also requires the board of directors to establish a governance and ethics committee, an audit committee and a human resources committee, whose functions are determined by law.

The bill prescribes new rules concerning the disclosure and publication of information, and reporting. It also provides that a three-year report on the performance of the university system must be submitted to the National Assembly.

Lastly, the bill contains consequential, transitional and final provisions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting educational institutions at the university level (R.S.Q., chapter E-14.1);
- Act respecting the Université du Québec (R.S.Q., chapter U-1).

Bill 38

AN ACT TO AMEND THE ACT RESPECTING EDUCATIONAL INSTITUTIONS AT THE UNIVERSITY LEVEL AND THE ACT RESPECTING THE UNIVERSITÉ DU QUÉBEC WITH RESPECT TO GOVERNANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING EDUCATIONAL INSTITUTIONS AT THE UNIVERSITY LEVEL

1. The Act respecting educational institutions at the university level (R.S.Q., chapter E-14.1) is amended by inserting the following before section 1:

"CHAPTER I

"DEFINITIONS AND PROHIBITIONS".

2. The Act is amended by inserting the following after section 4:

"CHAPTER II

"BOARD OF DIRECTORS

"DIVISION I

"RULES RELATING TO MEMBERS OF THE BOARD OF DIRECTORS

"**4.0.1.** An educational institution at the university level is administered by a board of directors consisting of 13 to 25 members. The most senior officer of the institution is a member of the board by virtue of office and is the only member appointed from among the management personnel.

"**4.0.2.** The composition of the board of directors must tend to reflect the various segments of the community served by the institution.

The board must include an equal number of women and men. If there is an odd number of board members, the most

senior officer is not counted.

4.0.3. At least 60% of the members of the board of directors must qualify as independent directors. At least 25% of the members must be from the university community.

4.0.4. "University community" means the members of the management personnel, members of the faculty, other employees of the institution and students.

4.0.5. All the independent directors are appointed by the board of directors, except one, who is appointed by the Government. Subject to section 4.0.26, the other board members are appointed by the university community.

The Government shall appoint three independent directors to the board of a constituent university, a school or an institute governed by the Act respecting the Université du Québec (chapter U-1).

The directors appointed by the Government must not be employees of the Ministère de l'Éducation, du Loisir et du Sport.

4.0.6. The number of members on the board of directors, its composition, the appointment procedure, the number of members who must qualify as independent directors and the number of members from the university community are determined by the board's internal by-laws.

4.0.7. A member of the board of directors qualifies as an independent director if the board or the Government, if the member is appointed by the Government, considers that the member have no direct or indirect relation or interest, for example of a financial, commercial or professional nature, likely to interfere with the quality of the decisions made as regards the interests of the institution.

A person's philanthropic relations or interests are not considered when determining whether the person qualifies as an independent director.

4.0.8. A member of the board of directors

(1) who is in the employ of the institution or has been in such employ in the three years preceding appointment to office,

(2) who has provided goods or services other than academic services to the institution for valuable consideration in the three years preceding the date of appointment,

(3) who has an immediate family member, as defined by the board of directors, who is a member of the senior management of the institution, or

(4) who is a student attending the institution registered in more than one taught course or research activity or registered in an activity leading to a degree, a diploma or a certificate

is deemed not to be an independent director.

4.0.9. A member of the board of directors appointed as an independent director must disclose in writing to the board, and to the Minister if the member was appointed by the Government, any situation likely to affect the member's status.

4.0.10. The sole fact of being in a limited and specific conflict of interest situation does not affect a board member's status as an independent director.

4.0.11. No act or document of an institution or decision of the board of directors is invalid because the board does not include an equal number of women and men or because less than 60% of the board members are independent directors.

4.0.12. A member of the board of directors who exercises functions on a full-time basis within an institution may not

have a direct or indirect interest in a body, enterprise or association that places the board member's personal interests in conflict with the institution's interests. If such an interest devolves to the board member, including by succession or gift, it must be renounced or disposed of with dispatch.

Any other board member who has a direct or indirect interest in a body, enterprise or association that places the board member's personal interests in conflict with the institution's interests must disclose it in writing to the chair of the board and abstain from participating in any discussion or decision involving that body, enterprise or association. The board member must also withdraw from a meeting for the duration of the discussion or vote on such a matter.

A board member who is also a member of the personnel must withdraw from a meeting for the duration of a discussion or vote on any matter concerning negotiations relating to a collective agreement or a collective labour contract that governs the member or other members of the institution's personnel.

This section does not prevent a board member from expressing an opinion on general measures relating to conditions of employment within the institution that would also apply to the board member.

"**4.0.13.** All members of the board of directors, whether or not they are independent directors, shall assume the same obligation to make decisions in the interest of the institution. Board members shall fulfill their obligations with impartiality, independence, loyalty, prudence and diligence in keeping with the institution's mission.

"**4.0.14.** Members of the board of directors other than the most senior officer of the institution are appointed for three years, except student members, who are appointed for two years.

Board members may be reappointed twice to serve in that capacity, for consecutive or non-consecutive terms.

Previous terms served as a board member are not counted in the total duration of the terms of the chair, who may serve twice in that capacity, for consecutive or non-consecutive terms.

"**4.0.15.** On the expiry of their term, board members shall remain in office until replaced or reappointed.

"**4.0.16.** A vacant position on the board of directors is filled in the manner prescribed for the appointment of the member to be replaced.

"**4.0.17.** A variety of experience and expertise profiles must be sought in appointing members of the board of directors in order to enable the board to exercise its functions properly.

"DIVISION II

"OPERATION AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS

"**4.0.18.** The board of directors shall exercise its powers in a manner consistent with the institution's mission as a university, namely, teaching at the university level, research and services to the community. It shall do so in keeping with recognized principles of governance in order to strengthen the stewardship of the institution in the interests of effectiveness, efficiency, transparency, responsibility and accountability, among other qualities.

"**4.0.19.** The board of directors shall determine the institution's strategic directions, which may take into account its distinctive characteristics within the Québec university network. The board shall see to the implementation of the strategic directions and inquire into any issue it considers important.

"**4.0.20.** The board of directors is accountable for its decisions and the chair is answerable to the Minister for those decisions.

"**4.0.21.** The board of directors shall consult with an authority or a committee representative of the university community before making a decision with respect to strategic or financial directions or the capital plan; the authority or committee must be able to obtain the documents relevant to the consultation within a reasonable time beforehand.

"4.0.22. The functions of the board of directors include

- (1) making sure the institution's mission and values and the principles referred to in section 4.0.18 are respected;
- (2) adopting the strategic directions;
- (3) approving the institution's budgetary estimates, annual budget, capital plan, financial statements and annual report;
- (4) approving the governance rules of the institution in keeping with its distinctive characteristics;
- (5) approving the code of ethics applicable to its members and to the members of the institution's personnel;
- (6) making sure the applicant recruiting process to fill the position of most senior officer of the institution provides an equal opportunity for applicants from outside and from within the institution and that the procedure allows for the independent and confidential examination of application;
- (7) approving the expertise and experience profiles to be used in appointing its members;
- (8) approving the criteria for evaluating its members and the criteria applicable to the most senior officer of the institution;
- (9) coming to an agreement with the most senior officer on the objectives to be achieved and determining the officer's salary, except in the case of a senior officer referred to in the second paragraph of section 4.0.26, and the procedure for evaluating the officer's performance;
- (10) approving the criteria for evaluating its performance;
- (11) ensuring the effective and efficient management of the institution's human, physical, financial and information resources;
- (12) establishing risk management policies;
- (13) regularly monitoring the institution's financial situation and making sure the appropriate controls are in place to preserve the institution's short-, medium- and long-term financial health;
- (14) making sure the governance and ethics committee, the audit committee, the human resources committee and the other committees exercise their functions properly;
- (15) making internal management by-laws;
- (16) determining delegations of authority;
- (17) approving human resources policies, as well as the standards and scales of remuneration and other conditions of employment of the institution's employees and management personnel, in accordance with the applicable legislative provisions;
- (18) adopting measures to evaluate the institution's effectiveness, efficiency and performance; and
- (19) determining collective bargaining mandates in accordance with the institution's budget envelope.

"4.0.23. The board of directors shall appoint the chair of the board from among the independent directors.

The offices of chair of the board and most senior officer of the institution may not be held concurrently.

"4.0.24. The chair of the board of directors shall preside at board meetings and see to the board's smooth operation. In the event of a tie, the chair has a casting vote.

The chair shall also see to the smooth operation of the board committees.

The chair shall assume any other function assigned by the board.

"**4.0.25.** The chair of the board of directors shall evaluate the performance of the other board members, including the most senior officer of the institution, according to the criteria established by the board.

"**4.0.26.** The most senior officer of the institution is appointed by the board of directors for the time it determines or according to the appointment procedure established by the institution's constituting Act, charter, statutes, by-laws or letters patent, if the board considers that that procedure provides an equal opportunity for applicants from outside and from within the institution and allows for the independent and confidential examination of applications.

The most senior officer of a constituent university, a school or an institute governed by the Act respecting the Université du Québec is appointed by the board of directors for the time it determines. The officer's salary is determined by the Government.

"**4.0.27.** The most senior officer of the institution shall work exclusively for the institution.

The most senior officer shall assume the full-time administration and management of the institution within the framework of its by-laws and policies and is answerable to the board for that administration and management.

"**4.0.28.** The most senior officer of the institution shall make sure the board of directors is given, at its request, sufficient human, physical, financial and information resources for the performance of its functions and those of its committees.

The most senior officer shall propose the strategic directions, budgetary estimates and capital plan, among other things, to the board.

The most senior officer shall assume any other function assigned by the board.

"**4.0.29.** The board of directors shall designate, according to its priorities, a chair of a committee established under the first paragraph of section 4.0.33 to act as a replacement when the chair of the board is absent or unable to act.

"**4.0.30.** The board of directors shall ensure that initiation and ongoing training programs for its members are implemented. New board members must receive training in the first year of their term, enabling them to exercise their functions competently.

"**4.0.31.** The institution shall assume the defence of a member of the board of directors who is prosecuted by a third party for an act done in the exercise of the functions of office and pay any damages resulting from that act, unless the board member committed a gross fault or a personal fault separable from those functions.

In penal or criminal proceedings, however, the institution shall pay the defence costs of the board member only if the board member is discharged or acquitted or if it considers that the board member acted in good faith.

"**4.0.32.** If the institution sues a member of the board of directors for an act done in the exercise of the functions of office and loses its case, it must pay the board member's defence costs if the court so decides.

If the institution wins its case only in part, the court may determine the amount of the defence costs it must pay.

"CHAPTER III

"COMMITTEES OF THE BOARD OF DIRECTORS

"DIVISION I

"ESTABLISHMENT OF COMMITTEES

"**4.0.33.** The board of directors must establish the following committees:

- (1) a governance and ethics committee;
- (2) an audit committee; and
- (3) a human resources committee.

The board may also form an executive committee to see that documents to be presented to the board are drawn up, issue opinions on proposals to be made to the board and ensure that the board's decisions are carried out.

The board may establish other committees as well to examine specific issues.

"**4.0.34.** The committees provided for under the first and second paragraphs of section 4.0.33 are composed of independent directors and not more than one member from the university community. The committees must be chaired by an independent director.

"**4.0.35.** The chair of the board of directors may take part in committee meetings.

"DIVISION II

"GOVERNANCE AND ETHICS COMMITTEE

"**4.0.36.** The functions of the governance and ethics committee include

- (1) formulating governance rules and a code of ethics for the conduct of the institution's affairs;
- (2) formulating a code of ethics applicable to board members and the personnel of the institution, subject to any applicable provisions of a regulation made under sections 3.0.1 and 3.0.2 of the Act respecting the Ministère du Conseil exécutif (chapter M-30);
- (3) developing expertise and experience profiles to be used in appointing board members, except the chair of the board and the most senior officer of the institution;
- (4) formulating criteria for evaluating board members;
- (5) formulating criteria for evaluating the performance of the board; and
- (6) developing initiation and ongoing training programs for board members.

The committee shall conduct the evaluation referred to in subparagraph 5 of the first paragraph in accordance with the criteria approved by the board.

"DIVISION III

"AUDIT COMMITTEE

"**4.0.37.** The audit committee must include members with accounting or financial expertise.

At least one committee member must be a member of one of the professional orders of accountants governed by the Professional Code (chapter C-26).

"**4.0.38.** The functions of the audit committee include

- (1) approving the annual internal audit plan;
- (2) making sure a plan for the optimal utilization of the institution's resources is put in place, and following up on that plan;
- (3) seeing to it that internal control mechanisms are put in place, and making sure they are appropriate and effective;
- (4) making sure the necessary follow-ups are carried out with the external auditors;
- (5) making sure a risk management process for the conduct of the institution's affairs is put in place and followed;
- (6) reviewing any activity likely to be detrimental to the institution's financial health that is brought to its attention by the internal auditor or another person;
- (7) ensuring the quality of the financial statements;
- (8) examining the financial statements with an external auditor appointed by the board of directors; and
- (9) recommending the approval of the financial statements by the board.

"**4.0.39.** The audit committee must notify the board of directors in writing on discovering operations or management practices that are unsound or do not comply with the law or the regulations or with the policies of the institution.

"**4.0.40.** The internal audit department shall operate under the authority of the audit committee.

The head of the internal audit department is under the administrative authority of the most senior officer of the institution, but reports to the audit committee on audit activities.

"**DIVISION IV**

"HUMAN RESOURCES COMMITTEE

"**4.0.41.** The functions of the human resources committee include

- (1) making sure human resources policies are put in place;
- (2) developing and proposing an expertise and experience profile to be used in appointing the most senior officer of the institution;
- (3) ensuring that the appointment procedure for senior management personnel is applied;
- (4) formulating and proposing criteria for evaluating the most senior officer of the institution, and making recommendations to the board of directors regarding the salary of the most senior officer when the board must determine that salary under paragraph 9 of section 4.0.22;
- (5) submitting to the board the human resources policies, as well as the standards and scales of remuneration and other conditions of employment of the institution's employees and management personnel;
- (6) making recommendations to the board on a method to evaluate the performance of senior management personnel;
- (7) receiving the candidacies the most senior officer of the institution proposes for the management positions under that officer's immediate authority, examining the candidacies and submitting its conclusions to the officer;
- (8) receiving from the administration a proposal on collective bargaining mandates, examining the proposal and proposing a mandate in accordance with the institution's budget envelope; and

(9) establishing a succession planning program for the institution's management personnel.

"CHAPTER IV

"REPORTING

"DIVISION I

"INFORMATION RELATING TO GOVERNANCE

"**4.0.42.** The institution must send the Minister an annual report on its activities within four months after the end of its fiscal year. The report must include the results obtained measured against the objectives set in its strategic directions and contain the summary, along with the conclusions and recommendations, of the following reports submitted to the board of directors:

- (1) the report of the governance and ethics committee on its activities during the fiscal year, including a summary of its evaluation of the performance of the board;
- (2) the report of the audit committee on the discharge of its mandate and on the optimal resource utilization plan; and
- (3) the report of the human resources committee on the discharge of its mandate.

The Minister shall lay the report before the National Assembly within 30 days of receiving it or, if the Assembly is not sitting, within 30 days of resumption.

"**4.0.43.** The institution must send the Minister the approved minutes of board meetings and the related documents.

"**4.0.44.** The board of directors shall post the following information on the institution's website:

- (1) the code of ethics applicable to its members and to the personnel of the institution, as well as their rules of professional conduct;
- (2) the dates of appointment and expiry of term of each of its members, and whether or not a member holds the status of independent director;
- (3) the identification of any other board of directors on which a board member sits;
- (4) a summary of the expertise and experience profile of each of its members and a statement of the member's attendance at board and committee meetings;
- (5) the situations it intends to investigate to determine whether a member qualifies as an independent director and the definition of immediate family member within the meaning of section 4.0.8;
- (6) the salary and benefits paid to each of the members of the management personnel;
- (7) the fees paid to the external auditor;
- (8) the results of the application of the general and specific indicators;
- (9) the decisions it makes that are public under the law; and,
- (10) at least 30 days before a public information and consultation meeting is held under section 4.0.47, any document of use in considering and discussing the subjects on the agenda.

The information described in this section must also be available for consultation on the premises of the institution by any means the board considers appropriate and must be kept up to date.

"**4.0.45.** After consulting with the chairs of the boards of directors of the institutions, the Minister shall establish qualitative and quantitative general indicators and their definitions, to be used by the institutions in their reporting.

The general indicators shall concern

- (1) the utilization of human, physical, financial and information resources;
- (2) the results for the year measured against the strategic directions adopted by the board;
- (3) with respect to the elements specified in subparagraphs 1 and 2, the results for the year and the two preceding years measured against the results of other institutions identified by the institution for benchmarking purposes; and
- (4) the results for the year measured against the institution's mission, values and objectives, and the principles mentioned in section 4.0.18.

An institution may also agree with the Minister on certain specific indicators that reflect its distinctive characteristics, including indicators measuring research performance and the quality of instruction.

Every year, at the time determined by the Minister, the institution must send the Minister the results of the application of both the general and the specific indicators, after submitting them to the board of directors.

"**4.0.46.** Every three years, the Minister must submit a report to the National Assembly on the performance of the university system. The report must take into account the benchmarking data that the boards of directors of the institutions must make public.

"**4.0.47.** The board of directors shall see to it that the institution holds a public information and consultation meeting at least once a year to report to the community served by the institution on its activities, the services provided, the results achieved, its priorities, the policy directions adopted, its financial situation and its management, and to answer questions.

To that end, a notice of the meeting must be published in at least one newspaper in the regions served and posted on the institution's website. The meeting must be held not less than 30 days after notice is given.

"DIVISION II

"OTHER REPORTS AND DOCUMENTS".

3. The Act is amended by inserting the following after section 4.7:

"CHAPTER V

"MISCELLANEOUS PROVISIONS

"**4.8.** Despite any provision of an institution's constituting Act, charter, statutes, by-laws or letters patent, this Act applies to an educational institution at the university level referred to in paragraphs 1 to 8, 10 or 11 of section 1 or a constituent university, a research institute or a superior school referred to in the Act respecting the Université du Québec (chapter U-1)."

ACT RESPECTING THE UNIVERSITÉ DU QUÉBEC

4. Section 28 of the Act respecting the Université du Québec (R.S.Q., chapter U-1) is amended by replacing ", appointed under subparagraphs *a* and *e* of section 32; they may also contain any other provision consistent with this Act" by "; they may also contain any provision consistent with this Act and with the Act respecting educational institutions at the university level (chapter E-14.1)".

5. Sections 32 to 38.1 of the Act are replaced by the following sections:

"**32.** The rights and powers of a constituent university are exercised in accordance with the Act respecting educational institutions at the university level.

"**33.** The Government may adopt a policy with respect to the situations it intends to investigate to determine whether a board member it appoints qualifies as an independent director."

6. Sections 40 and 40.1 of the Act are repealed.

7. Section 40.2 of the Act is amended by striking out paragraphs 3 and 4.

8. Section 42 of the Act is repealed.

9. Section 54 of the Act is replaced by the following section:

"**54.** The rights and powers of a research institute or a superior school are exercised in accordance with the Act respecting educational institutions at the university level."

10. Sections 54.1 to 55 of the Act are repealed.

11. Section 56 of the Act is amended by replacing "sections 40 to 47" by "sections 41 and 43 to 47".

TRANSITIONAL AND FINAL PROVISIONS

12. Provided it is representative of the university community, the authority or the committee referred to in section 4.0.21 of the Act respecting educational institutions at the university level (R.S.Q., chapter E-14.1), enacted by section 2 of this Act, may be the university council, the university senate or the university assembly, or any other authority representing the university community and already existing within the institution at the coming into force of that section 4.0.21.

13. The board of directors of an educational institution at the university level referred to in any of paragraphs 1 to 8, 10 or 11 of section 1 of the Act respecting educational institutions at the university level and the board of directors of a constituent university, a research institute or a superior school referred to in the Act respecting the Université du Québec (R.S.Q., chapter U-1) must, not later than (*insert the date that is 12 months after the date of coming into force of this section*), determine, in accordance with the Act respecting educational institutions at the university level as amended by this Act, the number of members on the board of directors, the composition, the appointment procedure, the number of members who must qualify as independent directors and the number of members to be chosen from the university community.

Before (*insert the date that is 12 months after the date of coming into force of this section*), the board must prescribe the other provisions allowing for the transition between the board of directors in office on (*insert the date of coming into force of this section*) and the new board of directors to be established in accordance with the new provisions, and take any other measure required to ensure the carrying out of the Act respecting educational institutions at the university level, as amended by this Act. The board may, among other things, modify the date on which the current board members' term of office ends and determine how the measures referred to in the first paragraph are to be applied to ensure compliance with the new provisions applicable as soon as practicable and not later than (*insert the date that is 18 months after the date of coming into force of this section*).

The board sends the Minister a copy of the provisions prescribed and the measures taken under this section as soon as they are adopted.

14. If a board of directors fails to comply with section 13 within the time prescribed, the Government, after giving the institution the opportunity to comply within the time it determines, may prescribe the provisions and take the measures called for, which are then deemed to have been prescribed or taken by the board of directors of the institution in

accordance with the Act respecting educational institutions at the university level, as amended by this Act.

15. Subject to the second paragraph of section 13, the members of the board of directors in office on (*insert the date of coming into force of this section*) continue in office for the unexpired portion of their term on the same terms until they are replaced or reappointed in accordance with the Act respecting educational institutions at the university level, as amended by this Act.

The same applies to the chair of the board of directors and the most senior officer in office on (*insert the date of coming into force of this section*). Those offices may continue to be occupied concurrently until the positions are filled in accordance with the new provisions.

16. The board of directors of an institution may, in accordance with the Act respecting educational institutions at the university level, as amended by this Act and with respect to a board member in office on (*insert the date of coming into force of this section*), determine that a board member has the status of independent director.

17. Despite section 4.0.34 of the Act respecting educational institutions at the university level, enacted by section 2 of this Act, a board member in office on (*insert the date of coming into force of this section*) who has not obtained the status of independent director under section 16 may be a member of a committee referred to in section 4.0.34 until the number of independent directors on the board of directors corresponds to at least 60% of the membership.

18. In addition to the transitional provisions provided for in this Act, the Government may, by a regulation made before (*insert the date that is one year after the date of coming into force of this section*), enact any other transitional provision or measure conducive to the carrying out of this Act.

The regulation provided for in the first paragraph may also contain any measure derogating from a provision of an Act for which the Minister is responsible, of this Act, of a special Act governing an institution referred to in this Act, or of an instrument made under any of those Acts.

A regulation made under this section is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1). Nor is it subject to the date of coming into force set out in section 17 of that Act.

19. This Act comes into force on the date or dates to be set by the Government.

However, the second paragraph of section 4.0.2 of the Act respecting educational institutions at the university level, enacted by section 2 of this Act, comes into force not later than 1 June 2013.