

DECEMBER 7, 2015

Québec Proposes Better Protection for Whistleblowers – Are We Allowing Disclosure in the Media to Get Out of Hand?

Authors: [Léon H. Moubayed](#), Stéphane Eljarrat and Lauréanne Vaillant

On December 2, 2015, one week after the final report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (commonly known as the “Charbonneau Commission”) was tabled, the National Assembly introduced Bill 87, titled *An Act to facilitate the disclosure of wrongdoings within public bodies*. The bill comes in response to the 8th recommendation of the Charbonneau Commission’s report and provides for the establishment of a general regime to protect whistleblowers within public bodies in Québec. In addition, Bill 87 contains a list of acts that are considered to be wrongdoings and that the government is trying to encourage individuals to disclose (commonly referred to as “whistleblowing”).

The new regime will be aimed at government departments, bodies with government-appointed personnel, government enterprises (Hydro-Québec, Investissement Québec, Loto-Québec, the Société des alcools du Québec and Société Innovatech), the Commission de la construction du Québec, the Caisse de dépôt et de placement du Québec, school boards, universities and public hospitals. At present, the regime proposed by Bill 87 does not apply to private enterprises.

The definition of “wrongdoing”, worded broadly, includes any contravention of a law or regulation applicable in Québec, any serious breach of the standards of ethics and professional conduct or any gross mismanagement within a public body, whether committed or about to be committed.

In addition, a “wrongdoing” would also include directing or counselling a person to commit a wrongdoing, in line with sections 21 and 22 of the *Criminal Code*.

Bill 87 provides for three disclosure mechanisms: the first and the second, respectively, consist of disclosure to the Public Protector or the officer designated within the public body to deal with disclosures (position to be created). The Public Protector may then conduct an investigation and, depending on its conclusions, refer the matter to a police force or the Anti-Corruption Commissioner, while the officer designated within the public body to deal with disclosures reports to the highest ranking administrative official, who then takes appropriate corrective measures.

The third mechanism raises concerns because it consists of direct disclosure to the public under specific circumstances. Even though the provision states that the information must first be communicated to the police or the Anti-Corruption Commissioner, it would allow any “person [who] has reasonable cause to believe that a wrongdoing committed or about to be committed poses a serious risk to a person’s health or safety or to the environment and cannot, given the urgency of the situation, contact [the Public Protector or the officer designated within that body to deal with disclosures] [to] disclose to the public any information he or she considers reasonably necessary to avoid that risk.”

Bill 87 provides for a severe fine – up to \$250,000 – for any person or public body taking reprisal (demotion, suspension, dismissal or transfer or any other disciplinary measure or measure that adversely affects such a person’s employment or conditions of employment) against a whistleblower. The fine would be in addition to the provisions of the *Criminal Code*, which impose sanctions for reprisals by private companies and other entities against whistleblowing employees.

This is the first version of Bill 87 and will be commented on by a parliamentary committee and, quite possibly, amended before it is assented to. Among other things, the mechanism authorizing the disclosure of information directly to the public, either through traditional media or through social media, will most likely raise questions and spark debates. Finally, the current version of Bill 87 does not provide for

any measures against ill-intentioned whistleblowers, who would abuse the regime by departing from its objective, among other things, to tarnish the reputation of a public body or one of its officials or executive officers.

Key Contact: [Léon H. Moubayed](#)

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.