



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 79
(2021, chapter 16)

**An Act to authorize the
communication of personal
information to the families of
Indigenous children who went
missing or died after being admitted
to an institution**

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EXPLANATORY NOTES

The purpose of this Act is to support the families of missing or deceased Indigenous children in their search for information on the circumstances under which those children went missing or died after they were admitted to a health and social services institution, taking into account such aspects as those families' linguistic and cultural characteristics and psychological and spiritual needs.

For that purpose, the Act establishes that a health and social services institution, a body or a religious congregation must, on a family member's request and subject to certain conditions, communicate to the family member the personal information that could shed light on the circumstances under which the Indigenous child went missing or died. The minister responsible for Indigenous affairs is given the responsibility to assist any person who requires assistance in making a request and following up on it. Furthermore, when acting in that capacity, the minister may, among other things, assist any person in charge of access to documents or the protection of personal information in an institution or body or any person belonging to a religious congregation who requires assistance.

The Act determines the rules that institutions, bodies and religious congregations must comply with as regards communicating personal information when it is reasonable to believe the person who could be a missing or deceased Indigenous child is still alive in light of the personal information held. The Act also imposes an obligation to give reasons for a refusal to communicate information about such a person and provides for the avenues of recourse available with the Commission d'accès à l'information following such a decision.

The minister is given the power to conduct investigations within institutions, bodies or religious congregations if one or more elements lead to the belief that information that could shed light on the circumstances under which an Indigenous child went missing or died exists, but could not be communicated to a person under the measures provided for by the Act.

The minister may assist the families of missing or deceased Indigenous children in completing the formalities surrounding an application to the Superior Court for an order of disinterment.

In addition, if a person is dissatisfied with the services received during his or her search for information from an institution, body or religious congregation, the person may file a complaint with the minister according to the procedure the minister establishes.

Lastly, the Act gives the minister the responsibility to report on the application of the Act in an annual report and determines when the measures the Act establishes cease to have effect.

Bill 79

AN ACT TO AUTHORIZE THE COMMUNICATION OF PERSONAL INFORMATION TO THE FAMILIES OF INDIGENOUS CHILDREN WHO WENT MISSING OR DIED AFTER BEING ADMITTED TO AN INSTITUTION

AS the circumstances under which Indigenous children went missing or died after they were admitted to a health and social services institution of Québec, while taken in charge for health reasons or after being evacuated without the presence of their parents, remain unknown to their families;

AS the National Assembly recognizes the suffering caused when a child goes missing or dies;

AS the National Assembly wishes to put in place a response to support Indigenous families in their quest for truth when they seek information on the circumstances under which an Indigenous child went missing or died and in their process of healing, and to embark on the path of reconciliation;

AS the National Assembly wishes to work in a spirit of cooperation with the Indigenous peoples, taking into account such aspects as their linguistic and cultural characteristics, and to keep Quebecers' collective memory alive;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

INTRODUCTORY PROVISIONS

1. The purpose of this Act is to support the families of missing or deceased Indigenous children in their search for information from an institution, body or religious congregation on the circumstances under which those children went missing or died after they were admitted to an institution, taking into account such aspects as those families' linguistic and cultural characteristics and psychological and spiritual needs. To that end, the Act provides, among other things, that the minister responsible for Indigenous affairs, in a spirit of cooperation, is to assist families who require it.

2. For the purposes of this Act,

(1) "institution" means, depending on the context, a health and social services institution within the meaning of the Act respecting health services and social services (chapter S-4.2), the Cree Board of Health and Social Services

of James Bay established under the Act respecting health services and social services for Cree Native persons (chapter S-5) or any place governed by law where health and social services were offered before 31 December 1992;

(2) “child” means a person who was a minor at the time he or she was admitted to an institution;

(3) “body” means a government department or agency, municipal body or school body within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1);

(4) “religious congregation” means a group of religious belonging to a religious community.

In addition, for the purposes of this Act, religious congregations are subject to the Act respecting the protection of personal information in the private sector (chapter P-39.1).

Furthermore, the concept of being admitted to an institution applies to children admitted to or registered in a hospital centre, a child and youth protection centre or a rehabilitation centre operated by an institution, or what served as such centres, as well as to children taken in charge by a foster family.

3. The minister responsible for Indigenous affairs must inform Indigenous families on a regular basis, taking into account such aspects as their linguistic and cultural characteristics, of the various measures put in place to support them in their search for information, in particular as regards the procedure to follow in accordance with this Act.

CHAPTER II

COMMUNICATION OF PERSONAL INFORMATION HELD BY AN INSTITUTION, BODY OR RELIGIOUS CONGREGATION ABOUT A PERSON WHO COULD BE A MISSING OR DECEASED INDIGENOUS CHILD

4. The minister responsible for Indigenous affairs provides assistance to any person who requires it, in accordance with the person’s needs, in making a request for the communication of personal information held by an institution, body or religious congregation about a person who could be a missing or deceased Indigenous child, as well as in following up on such a request, including by planning a meeting if the person making the request considers it necessary.

When assisting a person under the first paragraph, the minister may also provide assistance to any person in charge of access to documents or the protection of personal information in an institution or body or any person belonging to a religious congregation who requires assistance in processing the request. The minister and the person in charge of access to documents or

the protection of personal information in an institution or body or the person belonging to a religious congregation may also share any personal information with each other that is necessary to process the request.

5. A person may request the communication of personal information held by an institution, body or religious congregation about a person who could be a missing or deceased Indigenous child if he or she

(1) submits a request not later than 1 September 2031;

(2) is a family member of the child referred to in the request;

(3) has information that could lead to the belief that the child was admitted to an institution before 31 December 1992; and

(4) relates circumstances suggesting that the child went missing or died before 31 December 1992 while admitted to an institution.

For the purposes of subparagraph 2 of the first paragraph, “family member of the child” means the child’s great-grandfather or great-grandmother, grandfather or grandmother, father or mother, brother or sister, uncle or aunt, cousin, stepfather or stepmother, stepbrother or stepsister, father-in-law or mother-in-law, brother-in-law or sister-in-law, child, nephew or niece, or any other significant person.

If the Government considers it necessary, it may, before the submission deadline for requests for the communication of personal information, postpone the deadline for a maximum period of two years. It may grant further postponements, subject to the same conditions.

6. In response to a request for the communication of personal information, only the personal information that could shed light on the circumstances under which the child went missing or died, including information on facts that occurred after 31 December 1992, such as information on the child’s transfer to another institution and, if applicable, the fact that he or she was adopted, is communicated to the person who made the request.

If it is reasonable to believe that the person who could be a missing or deceased Indigenous child is still alive in light of the personal information held by an institution, body or religious congregation, the institution, body or religious congregation must try to obtain confirmation that he or she is still alive and information making it possible to locate him or her by inquiring with the Régie de l’assurance maladie du Québec. On receiving an inquiry to that effect from the institution, body or religious congregation, the Régie must send it the name, date of birth, sex, address and phone numbers entered in its register of insured persons for that person as well as, if applicable, that person’s date of death and address at the time of death.

The information communicated under the first and second paragraphs may be from, among other sources, a file concerning an adoption.

After receiving the information mentioned in the second paragraph, the institution, body or religious congregation processes the request for access according to the following rules:

(1) if the person is still alive and has been located, the institution, body or religious congregation, after having contacted him or her, communicates the information referred to in the first paragraph, unless the person objects to its communication, in which case only the fact that he or she is still alive is communicated and, if applicable, that he or she was adopted;

(2) if the person is still alive and the institution, body or religious congregation has taken all the necessary steps to contact him or her but has been unsuccessful, the information referred to in the first paragraph that does not pertain to facts that occurred after 31 December 1992 is communicated as well as the fact that he or she is still alive; or

(3) if it is not possible to determine whether the person is still alive or if the verifications with the Régie reveal that he or she has died, the information referred to in the first paragraph is communicated.

For the purposes of subparagraph 1 of the third paragraph, the institution, body or religious congregation must inform the person of his or her right to object to the communication of the information, except the fact that he or she is still alive and, if applicable, that he or she was adopted.

The institution, body or religious congregation may communicate any other information about that person, with his or her consent, to the person who made the request for access.

7. The institution, body or religious congregation must, if it refuses to communicate personal information referred to in section 6, give reasons for the refusal and indicate the provision of this Act or another Act on which the refusal is based.

8. A person to whom an institution or body has refused to communicate personal information referred to in section 6 may submit an application for review to the Commission d'accès à l'information, in accordance with Division III of Chapter IV of the Act respecting Access to documents held by public bodies and the Protection of personal information.

9. A person to whom a religious congregation has refused to communicate personal information referred to in section 6 may submit an application for the examination of a disagreement to the Commission d'accès à l'information, in accordance with Division V of the Act respecting the protection of personal information in the private sector.

10. Sections 4 to 6 and 8 of this Act apply despite sections 17, 19, 21 to 23 and 27 of the Act respecting health services and social services and sections 7 and 8 of the Act respecting health services and social services for Cree Native persons.

Section 6 of this Act applies despite section 63 of the Health Insurance Act (chapter A-29) and section 11.2 of the Youth Protection Act (chapter P-34.1).

11. Sections 4 to 6 of this Act apply despite the second paragraph of section 83 and the first paragraph of section 94 of the Act respecting Access to documents held by public bodies and the Protection of personal information and despite the first paragraph of section 27 and the first paragraph of section 30 of the Act respecting the protection of personal information in the private sector.

12. Despite section 97 of the Act respecting the determination of the causes and circumstances of death (chapter R-0.2), the Chief Coroner or a permanent coroner may allow an unexpurgated report or the accompanying documents to be consulted by or, on payment of the charge fixed by the Tariff of charges and indemnities payable under the Act respecting the determination of the causes and circumstances of death (chapter R-0.2, r. 4), send certified copies of them to a person who meets the requirements of section 5 of this Act, if the coroner considers that the report and documents could shed light on the circumstances under which an Indigenous child went missing or died.

CHAPTER III

INVESTIGATION POWERS

13. If one or more elements lead to the belief that information that could shed light on the circumstances under which an Indigenous child went missing or died exists, but could not be communicated to a person under this Act, the minister may, on the minister's initiative or on the person's request and after considering the steps taken by the person, conduct an investigation within an institution, body or religious congregation.

14. For the conduct of an investigation under section 13, the minister or the person the minister designates has the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

15. The minister or the person the minister designates may use a technological means to call a person to appear before him or her, if that person can be reached by such means.

16. The minister or the person the minister designates must, on request, identify himself or herself and, in the case of the person designated by the minister, show the certificate signed by the minister attesting the person's capacity.

17. The minister or the person the minister designates must, at the end of the investigation, record the investigation findings and the evidence collected in a report.

The investigation findings and the appropriate evidence collected are communicated to the person concerned in keeping with the rules set out in section 6, with the necessary modifications.

CHAPTER IV

DISINTERMENT

18. The minister may assist the families of missing or deceased Indigenous children in completing the formalities surrounding an application to the Superior Court for an order of disinterment. The minister must notify the Chief Coroner as soon as possible of the fact that such formalities are being undertaken.

CHAPTER V

COMPLAINTS

19. A person may, if dissatisfied with the services received during his or her search for information from an institution, body or religious congregation, file a complaint with the minister responsible for Indigenous affairs.

When a complaint is filed, the minister must take steps with the institution, body or religious congregation referred to in the complaint to understand and improve practices, particularly by raising awareness about Indigenous realities among the persons concerned.

20. A complaint must be filed with the minister in accordance with the procedure the minister establishes. The procedure must, in particular,

(1) specify how a complaint must be filed and how it will be processed;

(2) indicate the information the complaint must include; and

(3) allow the complainant and the chief executive officer of the body or head of the institution or religious congregation referred to in the complaint to submit observations.

The minister must disseminate the procedure, including by publishing it on the minister's website.

CHAPTER VI

FINAL PROVISIONS

21. A monitoring committee on the carrying out of this Act, composed of representatives of various groups or of persons, is created by the Minister, in order to contribute to improving the services offered to the families of Indigenous children who went missing or died, in particular with regard to complaints and concerning the status of the processing of applications.

22. The minister responsible for Indigenous affairs must report to the Government on the carrying out of this Act in an annual report not later than 31 March 2022 and, subsequently, not later than 31 March each year.

The report must state, in particular, the number of complaints made under the first paragraph of section 19 and their nature, the improvements made to practices and the awareness-raising measures taken, as applicable. It must also state the number of requests received and the number of investigations conducted under the Act, as well as their nature, their progress and the number of children concerned. The report must also contain the list of persons forming the monitoring committee created under section 21 and state the recommendations made by the latter.

The report is tabled by the minister in the National Assembly within 30 days after it is submitted to the Government or, if the Assembly is not sitting, within 30 days after resumption. It is also published, on that occasion, on the department's website.

In addition, the report is presented to the monitoring committee and to the Indigenous communities concerned. The manner in which the report is to be presented is to be determined with the monitoring committee.

23. The provisions of this Act cease to have effect once the submission deadline for requests for the communication of information under section 5 is reached and the processing of the requests is completed.

24. The minister responsible for Indigenous affairs is responsible for the administration of this Act.

25. This Act comes into force on 1 September 2021.

