



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FIFTH LEGISLATURE

Bill 105

(1995, chapter 54)

Plant Protection Act

Introduced 20 June 1995
Passage in principle 30 November 1995
Passage 5 December 1995
Assented to 7 December 1995

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EXPLANATORY NOTES

This bill replaces the Plant Protection Act.

Under the bill, nursery operators will no longer be required to obtain a permit, and the existing power as regards the annual inspection of nurseries is replaced by a general power of inspection to be exercised according to the risk of diseases and insects being spread. In addition, inspectors will be authorized to impose measures to prevent the spread of diseases and destructive insects, to take specimens and to seize and confiscate plants.

The bill authorizes the Minister to order the implementation of special measures such as plant treatment, plant segregation and, if required, plant destruction, in cases where destructive insects or diseases constitute a threat to the crops of an entire sector. The Minister may also in such circumstances order treatment of the soil and disinfection of premises where plants are found.

Lastly, the bill empowers the Government to establish, by regulation, a list of the diseases and destructive insects covered by the Act. It also contains penal and transitional provisions.

Bill 105

Plant Protection Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPLICATION AND INTERPRETATION

1. The object of this Act is to ensure the protection of plants, other than plants to which Division II of Chapter II of Title III of the Forest Act (R.S.Q., chapter F-4.1) applies, against diseases and destructive insects.

The medium in which a plant grows or any medium which may serve as a rooting medium shall be regarded as a plant for the purposes of this Act.

2. This Act applies to every owner or custodian of premises, including vehicles, where plants are found.

3. The Government shall make regulations determining the diseases and destructive insects to which this Act applies.

CHAPTER II

PLANT PROTECTION

4. The Minister shall designate persons to act as inspectors for the carrying out of plant protection measures.

5. Every owner or custodian of premises where plants are grown or kept for purposes of sale shall report to the Minister any facts indicating that a disease or destructive insect has reached epidemic proportions in the plants.

6. Where an inspector has reasonable cause to believe that a disease or destructive insects are affecting plants and are likely to spread, he may require the owner or custodian of the premises where the plants are found to apply any treatment or take any measure he considers appropriate, in particular, segregation of the plants affected, treatment of the soil, and disinfection of the premises, of the equipment and of any vehicle that has been used to transport the plants or that could spread the disease or the insects.

A written notice to that effect from the inspector shall be delivered in person, by bailiff or by registered or certified mail to the owner or custodian of the premises where the plants are found and, where applicable, to the owner or custodian of the vehicle. The notice must specify the obligations of the owner or custodian and the manner in which and the time within which they are to be performed.

7. If the owner or custodian fails to comply with the notice of the inspector, the inspector may himself carry out the required measures at the expense of the owner or custodian. The sums involved bear interest at the rate determined under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

8. Any inspector having reasonable cause to believe that there is a high and immediate risk of the spread of a disease or a high and immediate risk of an insect epidemic may require the destruction of the plants found in the premises and the disinfection of the premises, of the equipment and, where applicable, of any vehicle used to transport the plants.

A written notice to that effect from the inspector shall be delivered in person, by bailiff or by registered or certified mail to the owner or custodian of the premises and, where applicable, to the owner or custodian of the vehicle. The notice must specify the time within which and, where necessary, the manner in which the plants are to be destroyed.

If the owner or custodian fails to comply with the notice of the inspector, the inspector may confiscate the plants and cause them to be destroyed at the expense of the owner or custodian. The sums involved bear interest at the rate determined under section 28 of the Act respecting the Ministère du Revenu.

This section applies even where the risk is attributable to a disease or insect not mentioned in the regulations.

9. An owner or custodian to whom a notice has been delivered under section 6 or 8 is prohibited from holding for purposes of sale, offering for sale or on consignment, selling, exchanging, giving, transporting or causing to be transported any plant affected by a disease or by a destructive insect, and from using a vehicle to which the notice applies.

Such prohibition is lifted when an inspector considers that the risk of the spread of the disease or epidemic has been reduced to an acceptable level. The inspector shall in that case give a written attestation to the owner or custodian.

10. Where a destructive insect or a disease constitutes a threat to the crops of an entire sector determined by the Minister and the urgency of the situation so requires, the Minister may order every owner or custodian of premises where plants are found to segregate, treat or destroy the plants, to treat the soil and to disinfect the premises, the equipment and any vehicle used to transport the plants or that could spread the disease or the insects, within the time fixed by him and according to his instructions.

The Minister may also order such owners or custodians to take any other measure to reduce the risk of the spread of the disease or epidemic. He may also prohibit the keeping of plants for purposes of sale and the offering for sale, consignment, sale, exchange, gift or transport of the plants.

The order must set out the Minister's reasons and refer to any minutes, analysis or study report, or any other technical report on which the order is based.

A certified copy of the order shall be delivered in person, by bailiff or by registered or certified mail to every owner or custodian concerned. The order takes effect on the date of the delivery.

This section applies even where the threat is posed by a disease or insect not mentioned in a regulation.

11. If the owner or custodian fails to comply with the order of the Minister, an inspector may himself carry out the order or cause it to be carried out at the expense of the owner or custodian.

An inspector may also, where an order for the destruction of plants is not complied with, confiscate the plants for destruction at the expense of the owner or custodian.

The sums involved bear interest at the rate determined under section 28 of the Act respecting the Ministère du Revenu.

12. The carrying out of any measure ordered by an inspector or by the Minister does not give rise to any claim for damage resulting therefrom, except in cases of bad faith.

CHAPTER III

INSPECTION, SEIZURE AND CONFISCATION

13. An inspector who has reasonable cause to believe that a plant or equipment to which this Act applies can be found on certain premises may, in the performance of his duties,

(1) enter the premises at any reasonable time and make inspections, and, in the case of a vehicle, order that it be immobilized;

(2) examine any plant, equipment or soil, open any container found on the premises, and take specimens free of charge;

(3) take photographs of the premises, plant, equipment or soil;

(4) require the production of any book, account, register, record or document for examination or for the purpose of making copies or extracts, if he has reasonable cause to believe that they contain information related to the application of this Act.

14. The owner or custodian of premises being inspected, as well as every person on the premises, is required to lend assistance to the inspector in the exercise of his functions.

The inspector shall, on request, identify himself and produce a certificate of his capacity signed by the Minister.

15. No person may in any manner hinder an inspector in the exercise of his functions, mislead him by false declarations or refuse to furnish information he is entitled to obtain under this Act.

16. No judicial proceedings may be instituted against the Minister or an inspector for acts performed in good faith in the exercise of his functions.

17. An inspector may, in the exercise of his functions, seize a plant or equipment to which this Act applies, if he has reasonable

cause to believe that the plant or the equipment has been used to commit an offence under this Act, or that an offence has been committed in connection with the plant or equipment, or where an owner or a custodian of premises where a plant is found has failed to comply with an order.

An inspector may also, in the exercise of his functions, seize a vehicle if he has reasonable cause to believe that it has been used to commit an offence under this Act or that it could spread a disease or a destructive insect.

18. The Government may make regulations prescribing the sampling, seizure or confiscation procedures applicable in the course of an inspection and establish the form and content of any certificate, report or minutes to be completed by an inspector.

19. The owner or custodian of the seized property shall have custody thereof. However, the inspector may, if he considers it expedient, move the seized property to other premises for purposes of custody. The custodian shall also have custody of any seized property produced as evidence, unless the judge having received it in evidence decides otherwise.

Custody of the seized property shall be maintained until it is disposed of in accordance with sections 21 to 25 or, if proceedings are instituted, until the judge disposes of it otherwise.

20. No person may use or remove seized property or allow seized property to be used or removed except with the authorization of the inspector.

21. Any seized plant, equipment or vehicle must be returned to its owner or custodian where

(1) a period of 90 days has elapsed from the date of the seizure and no proceedings have been instituted; or

(2) the inspector is of the opinion, after a verification during that period, that no offence under this Act or infringement of an order has been committed, or that the owner or custodian of the seized property has, since the seizure, complied with the provisions of this Act or with an order.

22. The owner or custodian of seized property may apply to a judge for the return of the property.

The application must be served on the seizer or, if proceedings are instituted, on the prosecutor.

The judge shall grant the application if he is of the opinion that the applicant will suffer serious or irreparable injury as a result of the continued detention of the property and that returning the property will not hinder the course of justice.

23. Any seized plant, equipment or vehicle whose owner or custodian is unknown or cannot be found shall be confiscated 90 days after the date of seizure. It shall be disposed of in accordance with the Minister's instructions.

24. On the application of the seizer, a judge may order that the period of maintenance under seizure be extended for a maximum period of 90 days.

25. On rendering a verdict of guilty for an offence under a provision of this Act, a judge may, on the application of one of the parties and where a seizure has been made under section 17, order the confiscation of the seized property.

Advance notice of the application for confiscation shall be given to the person from whom the property was seized and to the other party, except where they are in the presence of the judge.

The Minister shall determine the manner in which the property confiscated under this section is to be disposed of.

CHAPTER IV

PENAL PROVISIONS

26. Every owner or custodian of premises where plants are found who contravenes section 5 or 9 is liable to a fine of not less than \$500 nor more than \$2 000.

In the case of a subsequent offence, the offender is liable to a fine of not less than \$1 000 nor more than \$4 000.

27. Every person who contravenes section 15 is liable to a fine of not less than \$1 000 nor more than \$3 000.

In the case of a subsequent offence, the offender is liable to a fine of not less than \$2 000 nor more than \$6 000.

CHAPTER V

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

28. The Minister of Agriculture, Fisheries and Food is responsible for the administration of this Act.

29. This Act replaces the Plant Protection Act (R.S.Q., chapter P-39), except the list of insects and diseases set out in section 15 of that Act, which remains in force until the coming into force of a regulation under section 3.

30. The Regulation respecting the list of names of insects and diseases to which the Plant Protection Act applies (R.R.Q., c. P-39, r.1) remains in force until it is replaced by a regulation under section 3.

31. This Act comes into force on 7 December 1995.

