



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 46
(2004, chapter 22)

**An Act to amend the Act respecting
Attorney General's prosecutors and
the Labour Code**

**Introduced 12 May 2004
Passage in principle 20 May 2004
Passage 4 November 2004
Assented to 10 November 2004**

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EXPLANATORY NOTES

This bill amends the Act respecting Attorney General's prosecutors and the Labour Code with a view to completing the Attorney General's prosecutors' collective bargaining system. The recognition of the right to strike and to declare a lock-out, which is subject to the maintenance of essential services, the optional recourse by either party to conciliation during negotiations and the prohibition from hiring replacement prosecutors are among the main characteristics of the system.

The bill subjects all prosecutors to the standards of ethics and discipline set by the Public Service Act and makes changes to the rules applicable to prosecutors engaging in certain political activities.

Lastly, the bill amends the Labour Code definition of "employee" in order that prosecutors be excluded from the application of the Code.

Bill 46

AN ACT TO AMEND THE ACT RESPECTING ATTORNEY GENERAL'S PROSECUTORS AND THE LABOUR CODE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

- 1.** Section 1 of the Act respecting Attorney General's prosecutors (R.S.Q., chapter S-35) is amended by adding the following sentence at the end of the second paragraph: "The provisions of that Act relative to standards of ethics and discipline apply to temporary prosecutors and to casual prosecutors."
- 2.** Section 9.1 of the said Act is amended by replacing "No permanent prosecutor" in the first line of the first paragraph by "No prosecutor other than a prosecutor appointed in accordance with section 9".
- 3.** Section 9.2 of the said Act is amended by striking out "permanent" in the first line.
- 4.** Section 9.3 of the said Act is amended by striking out "permanent" in the first line.
- 5.** Section 9.4 of the said Act is amended by replacing "the permanent prosecutor" in the first line of the first paragraph by "the permanent or temporary prosecutor".
- 6.** Section 9.7 of the said Act is amended by adding "or temporary" after "permanent" in the first line.
- 7.** Section 9.9 of the said Act is amended by adding "or temporary" after "permanent" in the second line.
- 8.** The said Act is amended by inserting the following section after section 10:

 "10.1. The association may not enter into a service agreement with a union organization or be affiliated with such an organization."
- 9.** Section 11 of the said Act is amended by adding the following paragraph at the end:

“Sections 47.3 to 47.6 and the second paragraph of section 116 of the Labour Code (chapter C-27) apply, with the necessary modifications, in the event of a contravention of the first paragraph.”

10. The said Act is amended by inserting the following sections after section 12:

“12.1. The negotiation stage begins on the one hundred and eightieth day prior to the expiry of the agreement.

Negotiations must be begun and carried on diligently and in good faith.

“12.2. At any time during the negotiations, either of the parties may request the Minister of Labour to designate a conciliation officer to assist them in reaching an agreement.

Notice of the request must be given to the other party on the same day.

Upon receiving the request, the Minister must designate a conciliation officer.

“12.3. The parties are bound to attend any meeting to which they are convened by the conciliation officer.

“12.4. The right to strike or to declare a lock-out is acquired on the expiry date of the agreement, unless a new agreement has been reached between the parties.

“12.5. A party may declare a strike or a lock-out if it has acquired the right to strike or to declare a lock-out pursuant to section 12.4 and if an agreement or list determining essential services has been approved by the Conseil des services essentiels established by the Labour Code (chapter C-27).

For that purpose, the party must notify the other party in writing not less than seven clear juridical days prior to the time it intends to resort to a strike or a lock-out. A strike or lock-out notice may not be renewed until after the day indicated in the previous notice as the time the party intended to resort to a strike or a lock-out.

“12.6. In the event of a strike or a lock-out, the parties must maintain the following essential services in the interest of justice:

(1) introducing or continuing proceedings involving a person in custody, before a court of Québec, including a joint trial where one of the accused is not in custody;

(2) examining and deciding whether or not to proceed on penal complaints to be prescribed within one month;

(3) continuing proceedings before the criminal court when the jury has been selected; and

(4) presenting requests for a postponement.

After consulting with the association, the chief prosecutors and the assistant chief prosecutors shall designate fifty prosecutors daily, making an effort to alternate among the prosecutors, and assign them to the provision of the services required under subparagraphs 1 to 4.

“12.7. The parties must make an agreement on essential services that is consistent with the requirements of section 12.6 and submit it to the Conseil des services essentiels for approval. If no agreement is reached, the party that wants to declare a strike or a lock-out must submit a list of essential services to the council for approval.

“12.8. Upon receiving an agreement or a list, the council shall determine whether or not the essential services provided for in the agreement or the list are sufficient in relation to the requirements of section 12.6. The council may make any recommendations it deems appropriate to the parties with a view to amending the agreement or the list, or it may approve it with amendments.

Even if an agreement or a list submitted for approval is consistent with the requirements of section 12.6, the council may increase or modify the services provided for in the agreement or the list if it considers that the circumstances warrant it.

The parties are bound to attend any meeting to which they are convened by the council.

“12.9. An agreement or a list approved by the council may not be modified without its approval.

“12.10. The employer and the association must comply with the provisions of an agreement or a list approved by the council.

“12.11. The Conseil des services essentiels, on its own initiative or at the request of an interested person, may inquire into a lock-out, a strike, a slowdown or any other concerted action that is contrary to law or during which the essential services provided for in an agreement or a list are not provided.

The council may also attempt to bring the parties to an agreement, or designate a person to do so and report on the situation.

Sections 111.17 to 111.20 of the Labour Code apply, with the necessary modifications, to situations referred to in the first paragraph.

“12.12. For the duration of a strike or a lock-out declared in accordance with this Act, the employer is prohibited from

(a) utilizing the services of a person, hired between the beginning of the negotiation stage and the end of the strike or lock-out, to discharge the duties of a prosecutor represented by the association;

(b) utilizing the services of a prosecutor represented by the association, except to the extent provided for in an agreement or a list approved by the Conseil des services essentiels.

“12.13. If an agreement or a list determining essential services approved by the council is violated by the association or the prosecutors it represents, the employer is exempt from the application of section 12.12 to the extent necessary to ensure compliance with the agreement or the list.”

11. Section 13 of the said Act is replaced by the following section:

“13. The agreement on the conditions of employment of prosecutors may contain any provision that is not contrary to public policy, not prohibited by law and not inconsistent with the provisions of this Act.”

12. Section 17 of the said Act is amended by replacing “to a strike, a concerted slowdown or a reduction” by “to a concerted slowdown or reduction”.

13. The said Act is amended by inserting the following after section 18:

“19. The Commission des relations du travail shall hear and dispose of any complaint based on section 11, 12.1, 12.3, 12.12, 12.13 or 15 other than a penal complaint, to the exclusion of any other court or tribunal.

“DIVISION IV

“PENAL PROVISIONS

“20. Any person declaring, carrying on or taking part in a strike contrary to the provisions of this Act is guilty of an offence and is liable, for each day or part of a day during which the strike continues, to a fine of \$50 to \$125 in the case of a prosecutor, \$1,000 to \$10,000 in the case of a director or officer of the association, and \$5,000 to \$50,000 in the case of the association.

“21. If the employer declares or carries on a lock-out contrary to the provisions of this Act, it is guilty of an offence and is liable, for each day or part of a day during which the lock-out continues, to a fine of \$5,000 to \$50,000.

“22. Any person contravening section 12.10 is guilty of an offence and is liable to a fine of \$1,000 to \$10,000 for each day or part of a day during which the offence continues.

“23. If the employer contravenes section 12.12, it is guilty of an offence and is liable to a fine of \$1,000 to \$5,000 for each day or part of a day during which the offence continues.

“24. Any person contravening section 17 is guilty of an offence and is liable to a fine of \$50 to \$125 for each day or part of a day during which the offence continues.

“25. Any person impeding the action of the Conseil des services essentiels or a person appointed by it or any person misleading them by concealment or misrepresentation is guilty of an offence and is liable to a fine of \$50 to \$125 in the case of a prosecutor, \$1,000 to \$10,000 in the case of a director or officer of the association, and \$5,000 to \$50,000 in the case of the association or the employer.

“26. Any person aiding or abetting the commission of an offence is party to the offence and is liable to the same penalty as that prescribed for the offender, and, where the offence is committed by the association, any director or officer who in any manner approves the act constituting the offence or acquiesces to the commission of the offence is guilty of the offence.

“27. If two or more persons conspire to commit an offence, each of them is guilty of each offence committed by any of them in carrying out the conspiracy.

“28. Only the association, on a resolution of its board and in accordance with article 10 of the Code of Penal Procedure (chapter C-25.1), may institute penal proceedings for an offence under a provision of this Act committed by the employer.”

14. Section 1 of the Labour Code (R.S.Q., chapter C-27) is amended by replacing subparagraph 4 of paragraph 1 by the following subparagraph:

“(4) an Attorney General’s prosecutor;”.

15. Schedule 1 to the said Code is amended by adding the following paragraph at the end:

“(26) section 19 of the Act respecting Attorney General’s prosecutors (chapter S-35).”

16. This Act comes into force on 10 November 2004.