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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-NINTH LEGISLATURE

**Bill 51**

(2009, chapter 36)

**An Act respecting the representation of  
certain home childcare providers and  
the negotiation process for their group  
agreements, and amending various  
legislative provisions**

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**Introduced 13 May 2009****Passed in principle 9 June 2009****Passed 18 June 2009****Assented to 19 June 2009**

## EXPLANATORY NOTES

*This Act establishes a system for the representation of certain home childcare providers to whom the Educational Childcare Act applies, and the negotiation process for their group agreements.*

*This Act prescribes the rules and conditions that must be met so that the Commission des relations du travail may grant recognition to an association to represent home childcare providers in dealings with the Minister. To this end, it stipulates that recognition is granted according to the territories determined under the Educational Childcare Act.*

*This Act sets out a procedure for the recognition of home childcare providers associations, along with the implications for recognized associations, such as the power to negotiate group agreements for its members and the obligation to uphold their rights.*

*It defines the subject matter that may be included in a group agreement, the procedures to be followed by the Minister and the association in negotiating an agreement and the applicable mediation and dispute-settlement mechanisms. In certain cases it provides for rights of recourse to the Commission des relations du travail, or to an arbitrator according to the procedure determined by the parties in the agreement. It also contains penal provisions.*

*This Act gives the Government the power to establish, by regulation, a protective re-assignment plan for home childcare providers, and to determine its conditions and mechanics as well as how it is to be funded and managed. The plan is to be administered by the Commission de la santé et de la sécurité du travail.*

*This Act amends the Educational Childcare Act to specify the composition of the board of directors of a non-profit body, other than the holder of a childcare centre permit, that may be accredited as a home childcare coordinating office. It specifies the functions of a coordinating office, and introduces a liability-exemption clause applicable to coordinating offices and their directors and employees acting in good faith in the performance of their duties.*

*It specifies that a home childcare provider is an own-account self-employed worker when providing childcare services under a contract with parents.*

*This Act defines the obligations of a subsidized childcare provider as to the provision of services and the parental contribution set by regulation. It also sets out the powers of the Minister to determine, in the subsidy agreement, conditions with respect to the mandatory service agreement between the provider of the childcare and the parent whose child occupies a subsidized childcare space, as well as the terms and amount of any additional contribution that may be requested for goods or services determined by regulation or by the subsidy agreement.*

*Lastly, it contains consequential and transitional measures.*

**LEGISLATION AMENDED BY THIS ACT:**

- Labour Code (R.S.Q., chapter C-27);
- Taxation Act (R.S.Q., chapter I-3);
- Educational Childcare Act (R.S.Q., chapter S-4.1.1).

**REGULATION AMENDED BY THIS ACT:**

- Educational Childcare Regulation (Order in Council 582-2006, 2006, G.O. 2, 2161).



## **Bill 51**

### **AN ACT RESPECTING THE REPRESENTATION OF CERTAIN HOME CHILDCARE PROVIDERS AND THE NEGOTIATION PROCESS FOR THEIR GROUP AGREEMENTS, AND AMENDING VARIOUS LEGISLATIVE PROVISIONS**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

#### **CHAPTER I**

##### **SCOPE**

**1.** This Act applies to home childcare providers whose operation is subsidized under the Educational Childcare Act (R.S.Q., chapter S-4.1.1) and to the associations that represent them.

This Act does not apply to the persons home childcare providers hire to assist or replace them.

#### **CHAPTER II**

##### **RIGHT OF ASSOCIATION**

##### **DIVISION I**

##### **RECOGNITION OF A HOME CHILDCARE PROVIDERS ASSOCIATION**

**2.** A home childcare provider has the right to belong to the home childcare providers association of that person's choice and to participate in the formation, activities and management of such an association.

**3.** A home childcare providers association is entitled to recognition by the Commission des relations du travail established by section 112 of the Labour Code (R.S.Q., chapter C-27) if

(1) it is a professional syndicate within the meaning of the Professional Syndicates Act (R.S.Q., chapter S-40) or an association whose object is similar to that of such a syndicate;

(2) it meets the conditions set out in this Act as to the representation of home childcare providers operating in a given territory; and

(3) it meets the other conditions set out in this Act.

For the purposes of this Act, “territory” refers to a territory assigned under section 44 of the Educational Childcare Act.

**4.** An association of home childcare providers may only be recognized if its by-laws

(1) provide for the right of its members to participate in meetings and to vote;

(2) require that its financial statements be disclosed to its members each year and that copies be given free of charge to any member who requests them; and

(3) require that any election to an office within the association be by secret ballot of its members.

**5.** No person may use intimidation or threats to induce someone to become a member, refrain from becoming a member or cease to be a member of a home childcare providers association.

**6.** No person may, in any manner, seek to dominate or hinder the formation or activities of a home childcare providers association.

**7.** A complaint relating to section 5 or 6 must be filed with the Commission within 30 days after the alleged contravention comes to light.

**8.** An application for recognition of a home childcare providers association is made in the form of a written document addressed to the Commission, and must be sent together with duly dated membership forms. On receipt of the application, the Commission sends a copy to the Minister along with any information it considers appropriate.

The application must specify the territory concerned, be authorized by a resolution of the association and be signed by representatives specially mandated for that purpose.

Within 20 days after receiving a copy of the application, the Minister sends to the Commission and the association a list of the names and contact information of all home childcare providers operating in the territory for which recognition has been requested.

The Commission may, by any means it considers appropriate, make a copy of the application available to the public for consultation.

**9.** An application for recognition must be accompanied by up-to-date documents evidencing the establishment of the association, a certified copy of its by-laws and a list of its members.

To be considered a member of an association, a home childcare provider must, on or before the date on which the application for recognition is filed,

(1) maintain a home childcare operation in the territory covered by the application;

(2) have signed, and not revoked, a duly dated membership form; and

(3) have personally paid the initiation fee, set by the association, within the 12 months preceding the date on which the association's application for recognition is filed.

**10.** Recognition for a given territory may be applied for

(1) at any time with regard to home childcare providers who are without a recognized association;

(2) 12 months after the date on which an association was recognized, if a group agreement has not been reached and provided no dispute is under arbitration, and no lawful concerted action or action in response to lawful concerted action has been taken;

(3) nine months after the date on which a group agreement expired, if a subsequent agreement has not been reached and provided no dispute is under arbitration and no concerted action has been taken;

(4) from the ninetieth to the sixtieth day prior to the date of expiry or renewal of a group agreement whose term is three years or less;

(5) from the one hundred and eightieth to the one hundred and fiftieth day prior to the date of expiry or renewal of a group agreement whose term is more than three years and, where such term so allows, during the period extending from the one hundred and eightieth to the one hundred and fiftieth day prior to the sixth anniversary of the signing or renewal of the group agreement and every second anniversary thereafter, except where such a period would end within 12 months of the one hundred and eightieth day prior to the date of expiry or renewal of the group agreement.

**11.** The filing of an application for recognition for a territory in which the home childcare providers are without a recognized association renders inadmissible any other application filed after the date of the first filing.

For the purposes of the first paragraph, an application is deemed to have been filed on the day it is received by one of the offices of the Commission.

**12.** If an application for recognition is rejected by the Commission or withdrawn, no further application may be filed for a period of three months except in the case of an application inadmissible under section 11.

**13.** The Commission grants recognition if it is satisfied that the membership of the applicant association comprises an absolute majority of the home childcare providers operating in the territory and that the other conditions set out in this Act have been met.

If between 35% and 50% of the home childcare providers operating in the territory are members of the association, the Commission holds a secret ballot to ensure that the association is truly representative. The Commission grants recognition to the association if it obtains an absolute majority of the votes of the home childcare providers operating in the territory and meet the other conditions set out in this Act.

**14.** If two or more associations seek recognition for the same territory and the membership of one of them comprises an absolute majority of the home childcare providers operating in the territory, the Commission grants recognition to that association provided it meets the other conditions set out in this Act.

If none of the associations meet the requirements of the first paragraph, but at least one of them has a membership comprising between 35% and 50% of the home childcare providers operating in the territory, the Commission holds a secret ballot to determine the extent to which the associations are representative.

Only the association or associations whose membership comprises at least 35% of the home childcare providers operating in the territory and the association recognized for the territory, if any, are to appear on the ballot. The Commission grants recognition to the association that obtains the most votes provided the home childcare providers who participated in the vote constitute an absolute majority of the home childcare providers operating in the territory and the other conditions set out in this Act are met.

**15.** The Commission makes its decision within 60 days of receiving an application and notifies the applicant; a copy of the decision is sent to the Minister.

If granted, recognition takes effect on the date of notification.

**16.** The Commission may not grant recognition to an association if it is established to the Commission's satisfaction that section 5 or 6 has been contravened by that association.

The Commission may, on its own initiative, investigate any alleged contravention of either of those sections, and when ruling on an application for recognition, the Commission may, of its own motion, invoke non-compliance.



**17.** A person's membership in a home childcare providers association may not be revealed by anyone during recognition or recognition revocation proceedings, except to the Commission, a member of its personnel, or the judge of a court to which an action under Title VI of Book V of the Code of Civil Procedure (R.S.Q., chapter C-25) relating to a certification is referred. These persons and any other person who becomes aware of a person's membership in such an association are bound to secrecy.

**18.** A recognized home childcare providers association represents all the home childcare providers operating in a given territory. It has the following rights and powers:

(1) to defend and promote the economic, social, moral and professional interests of home childcare providers;

(2) to cooperate with any organization pursuing similar interests;

(3) to research or study any subject likely to have an impact on the economic and social situation of home childcare providers;

(4) to set the amount of dues payable by home childcare providers; and

(5) to negotiate and sign a group agreement in accordance with this Act.

**19.** A recognized home childcare providers association notifies the Minister in writing of the amount it has set as dues.

Within 30 days after receiving such notification, the Minister withholds these dues from the subsidies payable to home childcare providers, whether or not they are members of the association, and remits the dues to the association each month.

**20.** A recognized home childcare providers association must not act in bad faith or in an arbitrary or discriminatory manner, or exhibit serious negligence towards any home childcare providers, whether or not they are members of the association.

**21.** A home childcare provider who believes that an association has contravened section 20 may lodge a complaint with the Commission within six months after the occurrence of the alleged contravention.

If the Commission is of the opinion that the association has contravened section 20, it may authorize the home childcare provider to submit the complaint to an arbitrator appointed by the Minister of Labour for a decision in accordance with the disagreement arbitration procedure provided for in the group agreement or, in the absence of such a procedure, in accordance with the procedure provided for in the second paragraph of section 56. The association pays the expenses incurred by the home childcare provider.

**22.** If a complaint is referred to an arbitrator under section 21, the Minister may not allege the association's non-observance of the procedure or the time periods provided for in the group agreement for the settlement of disagreements.

**23.** At the Commission's request, a home childcare providers association must send a list of its members to the Commission, in the form and within the time determined by the Commission.

The association must also send, at the Commission's request, a copy of any change in its statutes or by-laws to the Commission.

**24.** The Minister or a home childcare providers association whose membership comprises at least 35% of the home childcare providers operating in a given territory may, within the time periods specified in paragraphs 2 to 5 of section 10, ask the Commission to verify whether a recognized association still exists or still meets the conditions for recognition under this Act.

The Commission notifies the parties of the results of the verification and allows them to present observations within 10 days after receiving such notification.

**25.** The Commission revokes the recognition of any association that has ceased to exist or no longer meets the conditions set out in this Act and, if applicable, grants recognition to another association.

A newly recognized association is subrogated by operation of law in all rights and obligations resulting from a group agreement that is binding on another association and in force. It is bound by the agreement as though it were named in it and becomes a party to any proceeding relating to the group agreement in the place and stead of the former association.

**26.** When the Commission revokes a recognition, it notifies the association and the Minister. The revocation takes effect on the date of notification and entails the forfeiture of any rights and advantages the association may have enjoyed under this Act or a group agreement.

**27.** At any time, at the request of an interested party, the Commission may decide whether a person is a home childcare provider within the meaning of section 1, whether the person is a member of an association or which recognized association may represent the person given the territory in which the person operates as a home childcare provider. In addition, the Commission may decide any other question that may arise while an association is recognized.

## DIVISION II

### MODIFICATION OF A TERRITORY

**28.** If the Minister modifies a territory for which a home childcare providers association has been recognized or has filed an application for recognition, the Minister notifies the association or associations concerned in writing.

The recognized association continues to represent the home childcare providers of the original territory until the Commission rules on the representativeness of the association given the new territory determined by the Minister.

Upon such ruling, the Commission may

(1) grant or amend a recognition; or

(2) recognize the home childcare providers association whose membership comprises an absolute majority of the home childcare providers operating in the new territory, or hold a secret ballot under section 14 and grant recognition to the association that obtains the most votes in accordance with that section.

Despite the second paragraph of section 25, the group agreement that is binding on the association recognized for the new territory applies, as of the date on which it is recognized, to the home childcare providers operating in the new territory.

The Commission revokes the recognition of any home childcare providers association that no longer meets the conditions set out in this Act.

**29.** At the request of an interested party, the Commission may rule on any question relating to the applicability of section 28 and resolve any difficulty arising from its application and effects, in the manner the Commission considers most appropriate.

## DIVISION III

### GROUP AGREEMENT

**30.** The Minister may, with the authorization of the Conseil du trésor and on the conditions it determines, negotiate and sign a group agreement with a recognized home childcare providers association or group of such associations.

A group of recognized associations is a union, federation, confederation, legal person, labour body or other organization which a recognized home childcare providers association joins, belongs to or is affiliated with.

For the purpose of negotiating a group agreement, a recognized association designates a person to act as negotiator; if it belongs to a group of recognized associations, this designation is made by the group.

**31.** The subjects covered in a group agreement may include the following:

(1) the subsidy granted to fund educational home childcare and to give home childcare providers access to programs and services that meet their needs, in particular with regard to plans in such areas as employment benefits, health, safety, training and professional development;

(2) the terms and conditions applicable to days of leave that may be granted to home childcare providers, taking into account unpaid holidays under the Act respecting labour standards (R.S.Q., chapter N-1.1);

(3) the procedure for setting disagreements as to the interpretation or application of the group agreement;

(4) the setting up of committees to determine the mechanics of the different programs;

(5) the circumstances giving rise to and terms and conditions applicable to the indemnification of a home childcare provider for losses sustained as a result of a suspension, revocation or non-renewal of recognition that is subsequently contested before and annulled by the Administrative Tribunal of Québec under section 104 of the Educational Childcare Act.

**32.** When negotiating the amount of a subsidy referred to in paragraph 1 of section 31, the parties determine what constitutes, for a full service load, funding comparable to the remuneration of persons engaging in analogous activities. To this end, the parties identify jobs in related sectors of activity and adopt an appropriate evaluation methodology.

The parties take into account, among other things, the parent's contribution received by the home childcare provider, benefits enjoyed by the home childcare provider under any other Act, the compensation under sections 2 to 4 of the fourth paragraph and reasonable operating expenses incurred in providing childcare services. What constitutes reasonable operating expenses is determined by the parties.

The funding determined by the parties must be such that the net income from a home childcare operation with a full service load is equitable in relation to the annual salary for the jobs evaluated, taking into account, among other things, the number of days worked.

Such funding must comprise

(1) an integrated, overall percentage to stand in lieu of monetary compensation for days of leave equivalent to those paid under the Act respecting labour standards and under the National Holiday Act (R.S.Q., chapter F-1.1);

(2) financial compensation to offset the difference between the rate of the premium or contribution applicable to a self-employed worker under the plans established by the Act respecting parental insurance (R.S.Q., chapter A-29.011) and the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9), and the rates applicable to an employee under those plans;

(3) financial compensation so that a home childcare provider may enjoy coverage under the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001); and

(4) financial compensation based on the contribution that a home childcare provider must pay under section 34.1.1 of the Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5).

The subsidy determined as a result of this process is paid to the home childcare provider according to the terms and conditions determined by the Minister. Home childcare providers may also receive any other additional subsidy to which they are entitled under the Educational Childcare Act.

**33.** A group agreement may not deal with

(1) a rule, standard or measure under the Educational Childcare Act and its regulations; or

(2) the mandatory service agreement between the parent and the home childcare provider, in particular with regard to the methods of payment of the parent's contribution, the description of the services provided, and the services required by the parent.

**34.** A group agreement signed by a group of recognized associations is binding on each member association or affiliated association, including any new member association or affiliated association.

**35.** A group agreement applies to all home childcare providers operating in the territory of a recognized association that is bound by the agreement. It also applies to any new home childcare provider who begins operating in the territory.

**36.** The Minister or a recognized home childcare providers association or group of such associations may initiate negotiations for a group agreement by giving the other party at least 30 days' written notice of a meeting for the purpose of negotiating a group agreement.

A party that is already bound by a group agreement may give such notice within the 90 days preceding the expiry of the agreement.

**37.** The parties must begin to negotiate at the time set out in the notice and carry on negotiations with diligence and good faith.

**38.** A party may request that the Minister of Labour designate a mediator.

**39.** The mediator attempts to bring the parties to an agreement.

The parties must attend all meetings to which they are convened by the mediator.

**40.** The mediator has 60 days in which to bring the parties to an agreement. The Minister of Labour may, at the mediator's request, extend the mediation period by a maximum of 30 days.

**41.** If the mediation period expires without an agreement, the mediator gives to the parties and to the Minister of Labour a report specifying the matters that have been agreed on and those that are still in dispute, including any comments the mediator may have. This report is made public by the Minister of Labour.

**42.** The parties may jointly request that the Minister of Labour submit a dispute to an arbitrator. They agree beforehand on the limits within which the arbitrator is to render a decision. Sections 75 to 93, 103 and 139 to 140 of the Labour Code apply, with the necessary modifications.

**43.** A group agreement must have a set term of at least one year and, if it is a first agreement, of no more than three years.

If a fixed and definite term is not stipulated in the agreement, the agreement is deemed to be in force for one year.

**44.** A group agreement continues to apply after its expiry date until a new agreement comes into force.

**45.** The signing of a group agreement may occur only after being authorized in a secret ballot by a majority vote of the members of the recognized association who participated in the ballot.

The signing of a group agreement by a group of recognized associations may occur only after being authorized in a secret ballot by a majority vote of the members of the associations of the group who participated in the ballot.

**46.** A group agreement takes effect only on the filing of two duplicate originals or two true copies of the agreement and its schedules with the Minister of Labour. The same holds for any subsequent amendments to the agreement.

Such filing has retroactive effect to the date stipulated in the agreement for its coming into force or, failing such a date, to the date the agreement was signed.

**47.** A group agreement is not invalidated by the nullity of one or more of its provisions.

**48.** A recognized home childcare providers association may exercise any recourse available under the group agreement to the home childcare providers it represents without having to establish an assignment of the claim of the member concerned.

#### **DIVISION IV**

#### **PRESSURE TACTICS**

**49.** The right to undertake concerted action with a view to bringing the Minister to sign a group agreement is acquired 90 days after receipt of the notice referred to in section 36.

**50.** Concerted action that curtails services or affects their quality must be authorized in a secret ballot by a majority vote of the members of the recognized association who participate in the ballot.

If the association belongs to a group of associations, such concerted action must be authorized in a secret ballot by a majority vote of the members of the associations of the group who participate in the ballot.

The recognized association must take the steps necessary in the circumstances to inform its members, at least 48 hours in advance, that a ballot is to be held.

**51.** Before concerted action described in section 50 is undertaken, a recognized association or group of associations must give the Minister 15 days' written notice of the tactics it plans to use. The association or group must also send a copy of the notice to the Minister of Labour.

**52.** The Minister may, in response to concerted action described in section 50, reduce or cease to pay a subsidy to a home childcare provider, or cease to participate in a program created under a group agreement.

A subsidized childcare space assigned to a home childcare provider may not be reassigned for the sole reason that the home childcare provider participated in lawfully undertaken concerted action.

In a case described in the first paragraph, the last paragraph of section 97 of the Educational Childcare Act does not apply.

**53.** Throughout the term of the group agreement and as long as the right to undertake concerted action has not been acquired, it is prohibited for a home childcare provider to take concerted action described in section 50.

Similarly, throughout the term of a group agreement, it is prohibited for an association of home childcare providers or a group of such associations, and their employees, to advise home childcare providers to resort to concerted action described in section 50, or to participate in such action.

**54.** Concerted action is prohibited as long as a home childcare providers association has not been recognized or the right to undertake concerted action has not been acquired.

**55.** A home childcare provider may not be penalized solely for participating in lawful concerted action or for acting on any other right conferred by this Act.

Any complaint relating to the first paragraph must be filed with the Commission within 30 days after the alleged contravention comes to light.

## **DIVISION V**

### **SETTLEMENT OF DISAGREEMENTS**

**56.** Any disagreement on the interpretation or application of a group agreement must be settled according to the procedure provided for in the agreement.

If no such procedure is provided for or if the agreement provides for arbitration, the disagreement is submitted to an arbitrator. Sections 100 to 100.9 and 100.11, paragraphs *a*, *c*, *d*, *e* and *g* of section 100.12 and sections 100.16 to 101.9 and 139 to 140 of the Labour Code apply, with the necessary modifications.

**57.** Rights and recourses under a group agreement are prescribed six months after the date on which the cause of action occurred. Recourse to the disagreement settlement procedure interrupts prescription.

## **CHAPTER III**

### **MISCELLANEOUS PROVISIONS**

**58.** The Government may, by regulation, establish a protective reassignment plan for home childcare providers, determine its conditions and mechanics and the rights and obligations of the parties involved, as well as the powers and duties of the Commission de la santé et de la sécurité du travail, established by section 137 of the Act respecting occupational health and safety (R.S.Q., chapter S-2.1), and of the Commission des lésions professionnelles, established by section 367 of the Act respecting industrial accidents and occupational diseases.

The Government may also, by regulation, determine how such a plan is to be funded and managed.



Such a plan is administered by the Commission de la santé et de la sécurité du travail.

**59.** The provisions of the Labour Code respecting the Commission des relations du travail, its commissioners and its labour relations officers apply, with the necessary modifications, to any application that lies within the purview of the Commission under this Act. Likewise, the provisions of the Code and its regulations that set out rules of procedure, evidence and practice apply to any applications the Commission may receive.

**60.** Failure to comply with section 45 or 50 only gives rise to the application of Chapter IV.

**61.** The group representation and negotiation process established by this Act is complete and applies to the exclusion of any other process.

**62.** No provision of this Act or of a group agreement may restrict or affect the powers and responsibilities conferred by the Educational Childcare Act and its regulations on a home childcare coordinating office or the Minister, nor restrict or affect the jurisdiction conferred on the Administrative Tribunal of Québec by that Act.

**63.** With the authorization of the Conseil du trésor, the Minister may make all or part of a group agreement entered into with a recognized home childcare providers association or a group of such associations applicable to any home childcare provider not represented by a recognized association for that territory.

## CHAPTER IV

### PENAL PROVISIONS

**64.** Any person, association or group that fails to comply with a decision of the Commission des relations du travail is guilty of an offence and liable to a fine of \$1,000 to \$14,000 and of \$2,000 to \$28,000 for a second or subsequent conviction.

**65.** Any person, association or group that contravenes section 5 is guilty of an offence and liable to a fine of \$2,000 to \$30,000.

**66.** Any person, association or group that contravenes section 6 is guilty of an offence and liable to a fine of \$1,000 to \$14,000.

**67.** A home childcare providers association that contravenes section 23 is guilty of an offence and liable to a fine of \$500 to \$5,000.

**68.** A home childcare providers association or group of such associations that contravenes section 45 is guilty of an offence and liable to a fine of \$500 to \$5,000.

**69.** Any person, association or group that declares, instigates or participates in concerted action contrary to the provisions of any of sections 49 to 51, 53 and 54 is guilty of an offence and liable to the following fines for each day the action continues:

(1) \$75 to \$225 in the case of a home childcare provider or a person who assists or replaces a home childcare provider;

(2) \$800 to \$10,400 in the case of an officer, employee, director, agent or advisor of a home childcare providers association or a group of such associations; and

(3) \$7,000 to \$126,000 in the case of a home childcare providers association or group of such associations.

**70.** If a home childcare providers association or a group of such associations contravenes any of sections 64, 65 and 67 to 69, the officer or representative of the association or group who authorized, permitted or consented to the commission of the offence is liable to the fines provided for in those sections. In the case of a second or subsequent conviction, the fines are doubled.

## CHAPTER V

### AMENDING PROVISIONS

#### LABOUR CODE

**71.** Schedule I to the Labour Code (R.S.Q., chapter C-27) is amended by adding the following paragraph after paragraph 27:

“(28) sections 7, 8, 21, 24, 27, 29, 55 and 104 of the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (2009, chapter 36).”

#### TAXATION ACT

**72.** Section 134.1 of the Taxation Act (R.S.Q., chapter I-3), amended by section 185 of chapter 11 of the statutes of 2008, is again amended

(1) by inserting the following subparagraph after subparagraph *a* of the first paragraph:

“(a.1) dues the individual is required to pay to a recognized association under the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (2009, chapter 36) as a home childcare provider represented by that association;”;

(2) by replacing “subparagraph *a* or *b*” in the second paragraph by “subparagraphs *a* to *b*”.

#### EDUCATIONAL CHILDCARE ACT

**73.** Section 8 of the Educational Childcare Act (R.S.Q., chapter S-4.1.1) is amended by inserting the following paragraph after paragraph 1:

“(1.1) undertake to ensure the health, safety and well-being of the children to whom childcare is provided;”.

**74.** Section 9 of the Act is repealed.

**75.** Section 11 of the Act is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph:

“(1.1) undertakes to ensure the health, safety and well-being of the children to whom childcare is provided;”.

**76.** Section 12 of the Act is amended by striking out “of the permit holder’s main establishment and” in paragraph 2.

**77.** Section 31 of the Act is amended by replacing “each facility” in the first paragraph by “the permit holder’s facility”.

**78.** Section 40 of the Act is replaced by the following sections:

“**40.** A home childcare coordinating office is a childcare centre permit holder or a non-profit legal person other than a day care centre permit holder, accredited by the Minister to exercise the functions described in section 42.

In exercising its functions, a coordinating office must act in a manner that is respectful of the self-employed-worker status of the home childcare providers it recognizes, in accordance with the directives and instructions of the Minister.

It must also, in collaboration with the home childcare providers in its territory and the associations representing them, strive to enhance the quality of home childcare services and promote the training and professional development of home childcare providers.

“**40.1.** Subject to section 40.2, to be accredited as a home childcare coordinating office, the legal person must have a board of directors that meets the following requirements:

(1) it has at least five members;

(2) the majority of members are parents who are clients of a home childcare provider operating in the office’s assigned territory;

(3) one member is from the business sector or the institutional, social, education or community sector;

(4) no more than one member is a home childcare provider operating in the office's assigned territory;

(5) no member is related to another member, to a staff member of the legal person or to a home childcare provider operating in the office's assigned territory.

The following persons may not be members or directors of the legal person: day care centre permit holders and their directors and employees and any persons related to them.

The Minister may accredit as a coordinating office a legal person that meets the requirements of this section and section 43 and makes the proper application, or a legal person solicited by the Minister to assume such a role.

However, if the Minister considers that no legal person under consideration in a given territory meets the requirements of this section and section 43, the Minister may accredit any other non-profit legal person.

**“40.2.** If a childcare centre permit holder is accredited as a home childcare coordinating office, the permit holder must, within six months of being accredited, change the composition of the board of directors so that

(1) it has at least nine members;

(2) at least two thirds of the members are divided equally between parents who use the childcare provided by the childcare centre and parents who use the home childcare coordinated by the childcare centre; and

(3) no more than one member is a home childcare provider recognized by the childcare centre.”

**79.** Section 42 of the Act is replaced by the following sections:

**“42.** A home childcare coordinating office has the following functions in the territory assigned to it:

(1) to grant, renew, suspend or revoke the recognition of home childcare providers, according to the cases and conditions determined by law;

(2) to ensure that the home childcare providers it has recognized comply with the standards that apply to them by law;

(3) to distribute subsidized childcare spaces among recognized home childcare providers according to the childcare needs of parents and the instructions of the Minister;

(4) to determine, according to the cases and conditions determined by regulation, a parent's eligibility for payment of the contribution set by the Government under section 82;

(5) to administer, according to the Minister's instructions, the granting, payment, maintenance, suspension, reduction, withdrawal or recovery of subsidies to recognized home childcare providers, and see to the signing and management of agreements proposed by the Minister and to the management of the documents and information necessary for the administration of subsidies;

(6) to make information about home childcare services available to parents;

(7) to provide technical and pedagogical support on request; and

(8) to deal with complaints concerning recognized home childcare providers.

**“42.1.** A coordinating office and its directors and employees may not be prosecuted for an act or omission in good faith in the exercise of their functions.”

**80.** Section 43 of the Act is amended by replacing the part that precedes subparagraph 1 of the first paragraph by the following:

**“43.** In granting accreditation, the Minister is to consider, among other things, the following criteria:”.

**81.** Section 45 of the Act is replaced by the following section:

**“45.** Accreditation is granted or renewed for three years, or for a shorter period if the Minister considers it appropriate.”

**82.** Section 49 of the Act is amended by adding “, the terms of its accreditation or an instruction or directive given by the Minister” at the end of subparagraph 3 of the first paragraph.

**83.** Section 52 of the Act is amended by replacing “who, in return for payment, provides childcare in a private residence” by “who is an own-account self-employed worker who contracts with parents to provide childcare in a private residence, in return for payment,”.

**84.** Section 53 of the Act is amended by replacing “who, in return for payment, provides childcare in a private residence” in the first paragraph by “who is an own-account self-employed worker who contracts with parents to provide childcare in a private residence, in return for payment,”.

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

**“54.** A recognized home childcare provider makes a commitment toward parents to provide educational childcare services to their children in accordance with the law and to manage his or her business in such a way as to ensure the children’s health, safety and well-being.

A recognized home childcare provider who by obligation or choice takes on an adult as an assistant must do so in accordance with the law.”

**86.** Section 56 of the Act is repealed.

**87.** Section 59 of the Act is replaced by the following section:

**“59.** A coordinating office must keep a register of the recognized home childcare providers in its territory and send a copy to the Minister.

The register must contain the name and contact information of each recognized home childcare provider along with, in each case, the date of recognition, the number of children to whom childcare is to be provided and the number of subsidized childcare spaces assigned.

The coordinating office must inform the Minister without delay of any changes in the information in the register, as they occur.

The Minister may, at any time, require a coordinating office to send an up-to-date copy of the register.”

**88.** Section 61 of the Act is amended by replacing “received” in the second paragraph by “granted”.

**89.** Section 62 of the Act is amended by replacing “received” in the second paragraph by “granted”.

**90.** Section 64 of the Act is amended by adding “and must be sent in the prescribed form” at the end.

**91.** Section 66 of the Act is amended by adding the following subparagraph at the end of the first paragraph:

“(6) if the board of directors of a childcare centre or coordinating office so requests or is unable to act.”

**92.** Section 83 of the Act is amended

(1) by replacing the first paragraph by the following paragraphs:

**“83.** A subsidized childcare provider must provide educational childcare services according to the age group of the children and in accordance with the type of services and the period, duration and core hours prescribed by regulation.

Childcare services include the services determined by regulation as well as any organized activities, any materials and any other services provided to children while they are in childcare, unless specifically exempted by regulation.”;

(2) by replacing “The contribution” in the second paragraph by “The contribution referred to in the first paragraph of section 82”.

**93.** Section 86 of the Act is replaced by the following sections:

**“86.** A subsidized childcare provider may not request or receive, directly or indirectly,

(1) any contribution from a parent who has been exempted from paying it; or

(2) for services prescribed by regulation or provided for in a subsidy agreement, any contribution or additional fees other than those set under section 82 or 92.

Nor may a subsidized childcare provider request or receive, directly or indirectly, any administration, registration or management fees with respect to subsidized services, or any fees for putting a person on a waiting list to obtain a subsidized childcare space.

Moreover, a subsidized childcare provider may not make a child’s admission subject to the payment by the parent of a higher contribution than that set by regulation or of any amount in addition to the set contribution. Nor may a subsidized childcare provider refuse to admit a child because the parent refuses to pay such a contribution or amount.

Except to the extent provided by regulation, a subsidized childcare provider may not tolerate or permit a situation in which a child who occupies a subsidized childcare space is given additional goods or services for which any form of service or contribution is to be required directly or indirectly from the parent.

**“86.1.** No person may directly or indirectly induce a parent to pay more than the contribution set by regulation or to pay a contribution the parent is exempted from paying.”

**94.** Section 92 of the Act is amended by adding the following paragraphs:

“In such a subsidy agreement, the Minister may determine the form, content, required elements and any other mandatory clause of a childcare

agreement between the childcare provider and the parent of a child who occupies a subsidized childcare space, and may also determine the terms of renewal of such an agreement. However, the childcare agreement may not, when intended for a home childcare provider, contravene the provisions of a group agreement under the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (2009, chapter 36).

The Minister may also determine terms for the provision of services and the amount of any fee or any other additional contribution that may be requested or received by a subsidized childcare provider for certain specific goods and services exempted by regulation or for any additional childcare services provided to a child who occupies a subsidized childcare space.”

**95.** Section 97 of the Act is amended by replacing subparagraph 7 of the first paragraph by the following subparagraph:

“(7) contravenes section 86 or 86.1; or”.

**96.** Section 103 of the Act is amended by striking out “subsidized”.

**97.** Section 106 of the Act is amended

(1) by inserting the following paragraph after paragraph 13:

“(13.1) set the ratio of staff to qualified staff present during the provision of childcare services to be respected by a childcare provider;”;

(2) by adding “or to a childcare provider” at the end of paragraph 18;

(3) by replacing “to be applied to” in paragraph 23 by “applicable to”;

(4) by inserting the following paragraphs after paragraph 24:

“(24.1) determine the goods and services that must be provided by a subsidized childcare provider in return for the contribution set by the Government;

“(24.2) determine the goods, activities and services for which the subsidized childcare provider may request or receive a payment beyond the set contribution;”;

(5) by inserting “and paid” after “how it is to be calculated” in paragraph 25;

(6) by inserting the following paragraph after paragraph 27:

“(27.1) determine the terms and conditions to be complied with by a childcare provider in the delivery of subsidized childcare;”;



(7) by replacing “the type and duration of childcare services to which” in paragraph 28 by “the type of services, and the period, duration and core hours to which”.

**98.** Section 108 of the Act is amended by inserting the following paragraph after the first paragraph:

“The Minister may also, in a subsidy agreement under section 92, set core hours other than those determined under paragraph 28 of section 106, if the Minister believes that such core hours are preferable given the childcare needs of the parents and the childcare services offered by other childcare providers in the territory served by the applicant for a permit or the childcare provider.”

**99.** Section 109 of the Act is amended by inserting “, section 86.1” after “section 78”.

**100.** The Act is amended by inserting the following division after Division II of Chapter XII:

#### “DIVISION II.I

#### “ADVISORY COMMITTEE

“**124.1.** The Minister may form an advisory committee to provide advice on all aspects of home childcare, gather pertinent information and report its observations and recommendations to the Minister.

Such a committee must be composed of representatives of the coordinating offices accredited by the Minister or representatives of associations of such coordinating offices.”

**101.** Division III of Chapter XII of the Act, comprising sections 125 to 132, is repealed.

#### EDUCATIONAL CHILDCARE REGULATION

**102.** Section 45 of the Educational Childcare Regulation, enacted by Order in Council 582-2006 (2006, G.O. 2, 2161), is amended by replacing “9, 40 or 158” in subparagraph 2 of the first paragraph by “40.1 or 40.2”.

**103.** Section 49 of the Regulation is amended by replacing “the list referred to” in the second paragraph by “the register referred to”.

## CHAPTER VI

### TRANSITIONAL PROVISIONS

**104.** For the purpose of granting recognition to an association, the Commission des relations du travail, for each territory assigned under section 44 of the Educational Childcare Act (R.S.Q., chapter S-4.1.1), verifies, by means of a secret-ballot vote held according to the terms and conditions provided for in this section, the representativeness of the home childcare providers associations which, before 19 June 2009, filed a petition for certification under section 25 of the Labour Code (R.S.Q., chapter C-27) with respect to home childcare providers operating in that territory.

In each territory assigned under section 44 of the Educational Childcare Act, the following parties are on the ballot:

(1) any association which, before 18 December 2003, filed a petition for certification or obtained certification with respect to one or more home childcare providers recognized by a childcare centre and operating, on 19 June 2009, in that territory;

(2) any association which, on or after 18 December 2003, filed, with respect to home childcare providers operating in that territory, a petition for certification that is pending on 19 June 2009.

Only home childcare providers operating in a territory assigned under section 44 of the Educational Childcare Act on 19 June 2009 may be on the ballot for that territory.

If only one association is on the ballot, the Commission grants recognition to it if it obtains an absolute majority of votes of the home childcare providers entitled to vote in the territory concerned.

If two associations are on the ballot, the Commission recognizes the one that receives the most votes, provided they together obtain an absolute majority of votes of the home childcare providers entitled to vote in the territory concerned.

If more than two associations are on the ballot and they together obtain an absolute majority of votes of the home childcare providers entitled to vote in the territory concerned, without any one of them obtaining an absolute majority, the Commission orders a new secret-ballot vote, removing from the ballot the association that obtained the fewest votes.

On request, the Commission may resolve any difficulty arising from the application of this section, including one that may arise from the rule set out in section 11. To that end, it has all the powers provided for in section 59.

A secret-ballot vote is not required if, for a given territory, among the associations that qualify under the second paragraph, only one has a

membership comprising an absolute majority of home childcare providers. This determination is made on the date the petition for certification is filed. However, with regard to a petition filed before 18 December 2003, the Commission may order a secret-ballot vote to be held if it believes this is required to verify the representativeness of the association concerned. To this end, it takes into account, apart from the date of the petition, the number of home childcare providers who are members of the association on the day of filing of the petition in relation to the number of home childcare providers to whom this Act applies who are currently operating in the territory concerned, the number of home childcare providers who were members of the association but no longer provide childcare in that territory and any other factor it judges pertinent.

**105.** Subject to section 104, any certification granted to an association representing home childcare providers under the Labour Code, any pending petition for certification and any resulting recourse brought by an association or a home childcare provider before the Commission des relations du travail is without effect.

**106.** The Government may, by regulation made before 19 June 2010, enact any other transitional provision or measure for the administration of this Act.

Such a regulation is not subject to the publication requirement of section 8 of the Regulations Act (R.S.Q., chapter R-18.1) or to the requirement of section 17 of that Act as regards its date of coming into force.

However, if the regulation so provides, it may apply from a date not prior to 19 June 2009.

**107.** A regulation made before 19 June 2010 for the purposes of section 58 may have a shorter publication period than that required under section 11 of the Regulations Act, but not shorter than 20 days.

Such a regulation is not subject to the requirement of section 17 of that Act as regards its date of coming into force.

## CHAPTER VII

### FINAL PROVISIONS

**108.** The Act respecting labour standards (R.S.Q., chapter N-1.1) and the Act respecting occupational health and safety (R.S.Q., chapter S-2.1) do not apply to home childcare providers to whom this Act applies.

However, sections 40 to 48 of the Act respecting occupational health and safety apply until the coming into force of the first regulation made under section 58.

**109.** The Commission de l'équité salariale, established by the Pay Equity Act (R.S.Q., chapter E-12.001), may not receive a complaint from a home childcare provider to whom this Act applies.

**110.** The Minister of Families is responsible for the administration of this Act.

**111.** Sections 108 and 109 have effect as of 13 May 2009.

**112.** The provisions of this Act come into force on 19 June 2009, except sections 30 to 48, 56 and 57, which come into force on the date or dates to be set by the Government.