



NATIONAL ASSEMBLY

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Bill 73

(2009, chapter 57)

An Act to provide for measures to fight crime in the construction industry

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EXPLANATORY NOTES

This Act amends various legislative provisions concerning the conditions that apply to the issue of building contractor and owner-builder licences and the restriction that may be attached to the licences and that prevents the obtention of a public contract. It also amends various penal provisions relating to the construction industry.

The Act provides for additional indictable offences that prevent the issue of a building contractor or owner-builder licence to persons convicted of them. It prohibits the issue of a licence to a wider range of shareholders of the licence applicant than previously determined, if they have been convicted of certain offences. The Act also introduces the obligation for the licence applicant to provide a list of its lenders and a statement of any previous convictions from each lender.

With respect to licences containing a restriction preventing the obtention of a public contract, the Act broadens the notion of public contract, in particular by adding certain bodies, such as state-owned enterprises and universities, that may be party to such contracts. The Act also abolishes the requirement for municipalities to receive a government grant for a construction project in order for a contract related to that project to be considered a public contract. The Act also provides that a conviction under certain laws will result in a restriction on a licence preventing the holder from obtaining a public contract.

In addition, the Act increases the amount of certain fines, in particular with respect to false statements for the purpose of obtaining a licence, failure to respect the conditions attached to acting in the capacity of job-site steward, offers of an advantage by an employer to a union representative in the performance of his or her functions, the acceptance of such an advantage by a representative, the refusal to furnish the Commission de la construction du Québec with certain information and the hindering of the work of an employee of the Commission in the exercise of the functions of office.

The Act also adds new penal offences, including one that applies to any person who uses intimidation to cause a slowdown or stoppage of activities on a construction site, and an offence for a contractor who enters into a contract for the loan of money with a lender who

refuses to provide a statement of any previous convictions or with a lender the contractor knows was convicted of an indictable offence connected with the lender's business.

Lastly, the fines provided for in the Building Act and the Act respecting labour relations, vocational training and workforce management in the construction industry will be indexed annually.

LEGISLATION AMENDED BY THIS ACT:

- Building Act (R.S.Q., chapter B-1.1);
- Act respecting labour relations, vocational training and workforce management in the construction industry (R.S.Q., chapter R-20).

Bill 73

AN ACT TO PROVIDE FOR MEASURES TO FIGHT CRIME IN THE CONSTRUCTION INDUSTRY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 58 of the Building Act (R.S.Q., chapter B-1.1) is amended

(1) by replacing subparagraph 8 of the first paragraph by the following subparagraph:

“(8) he has not, in the five years preceding the application, been convicted of an offence under a fiscal law or an indictable offence connected with the business that he intends to carry on in the construction industry, or an indictable offence under sections 467.11 to 467.13 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46), unless he has obtained a pardon;”;

(2) by inserting the following subparagraph after subparagraph 8.1 of the first paragraph:

“(8.2) he has provided a list of any lenders he may have under a contract for the loan of money, along with a statement from each lender stipulating whether the lender or, in the case of a partnership or a legal person, its officers, whose names the lender must provide, have, in the five years preceding the loan, been convicted of an offence under a fiscal law or an indictable offence unless they have obtained a pardon;”;

(3) by adding the following paragraph at the end:

“Subparagraph 8.2 of the first paragraph does not apply to insurers as defined by the Act respecting insurance (chapter A-32) and duly authorized to act in that capacity, financial services cooperatives as defined by the Act respecting financial services cooperatives (chapter C-67.3), trust companies and savings companies as defined by the Act respecting trust companies and savings companies (chapter S-29.01) and duly authorized to act in that capacity, or banks listed in Schedule I or II to the Bank Act (Statutes of Canada, 1991, chapter 46).”

2. Section 60 of the Act is amended

(1) by replacing subparagraphs 6 and 6.1 of the first paragraph by the following subparagraph:

“(6) neither it nor any of its officers or, if it is not a reporting issuer within the meaning of the Securities Act (chapter V-1.1), any of its shareholders has, in the five years preceding the application, been convicted of an offence under a fiscal law or an indictable offence connected with the business that the person intends to carry on in the construction industry, or an indictable offence under sections 467.11 to 467.13 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or, if convicted of such an offence, a pardon was granted;”;

(2) by inserting the following subparagraph after subparagraph 7 of the first paragraph:

“(8) it has provided a list of any lenders it may have under a contract for the loan of money, along with a statement from each lender stipulating whether the lender and, in the case of a partnership or a legal person, its officers whose names the lender must provide, have, in the five years preceding the loan, been convicted of an offence under a fiscal law or an indictable offence, unless they have obtained a pardon;”;

(3) by replacing “subparagraphs 6 and 6.1” in the last paragraph by “subparagraph 6”;

(4) by adding the following sentence at the end of the last paragraph: “It must also refuse to issue a licence where an officer of a partnership or legal person that holds shares in the partnership or legal person is convicted of an offence described in subparagraph 6.”;

(5) by adding the following paragraph at the end:

“Subparagraph 8 of the first paragraph also applies to lenders and officers of lenders whose loans are granted personally to an officer of the partnership or legal person for the purposes of the partnership or legal person. However, under no circumstances does it apply to insurers as defined by the Act respecting insurance and duly authorized to act in that capacity, financial services cooperatives as defined by the Act respecting financial services cooperatives, trust companies and savings companies as defined by the Act respecting trust companies and savings companies and duly authorized to act in that capacity, or banks listed in Schedule I or II to the Bank Act.”

3. Section 61 of the Act is amended by replacing subparagraph 2 of the first paragraph by the following subparagraph:

“(2) was an officer of a partnership or a legal person which, in the five years preceding the application, was convicted of an offence under a fiscal law or an indictable offence connected with the business that the person intends to carry on in the construction industry, or an indictable offence under sections 467.11 to 467.13 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46), unless he has obtained a pardon;”.

4. Section 65.1 of the Act is amended by adding the following paragraph at the end:

“The Board shall also indicate on the licence that it contains a restriction as regards the obtention of a public contract when the licence holder or, in the case of a partnership or a legal person, a person referred to in subparagraph 6 of the first paragraph of section 60 was convicted, in the last five years, under section 45 of the Competition Act (Revised Statutes of Canada, 1985, chapter C-34) or sentenced, in the last five years, to five or more years of imprisonment under section 462.31 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or section 5, 6 or 7 of the Controlled Drugs and Substances Act (Statutes of Canada, 1996, chapter 19).”

5. Section 65.4 of the Act, amended by section 31 of chapter 29 of the statutes of 2006, is replaced by the following section:

“65.4. For the purposes of this subdivision, a public contract is a construction contract and any construction subcontract that relates directly or indirectly to such a contract to which the following bodies are party:

- (1) a government department;
- (2) a body all or part of whose expenditures are provided for in the budgetary estimates tabled in the National Assembly otherwise than under a transferred appropriation;
- (3) a body to which the Government or a minister appoints the majority of the members, to which, by law, the personnel are appointed in accordance with the Public Service Act (chapter F-3.1.1), or whose capital stock forms part of the domain of the State;
- (4) a school board, the Comité de gestion de la taxe scolaire de l'île de Montréal, a general and vocational college, or a university institution referred to in paragraphs 1 to 11 of section 1 of the Act respecting educational institutions at the university level (chapter E-14.1);
- (5) a health and social services agency or a public institution under the Act respecting health services and social services (chapter S-4.2), a legal person or a joint procurement group referred to in section 383 of that Act, the James Bay Cree health and social services council established under the Act respecting health services and social services for Cree Native persons (chapter S-5), a health communication centre referred to in the Act respecting pre-hospital emergency services (chapter S-6.2) or the Corporation d'hébergement du Québec; or
- (6) a municipality, a regional county municipality, a metropolitan community, the Kativik Regional Government, a mixed enterprise company under the Act respecting mixed enterprise companies in the municipal sector (chapter S-25.01), an intermunicipal board, a public transit authority, an

intermunicipal board of transport, or any other body referred to in section 307 of the Act respecting elections and referendums in municipalities (chapter E-2.2).

A person appointed or designated by the Government or a minister, together with the personnel directed by the person, in the exercise of the functions assigned to the person by law, the Government or a minister, is considered to be a body.”

6. Section 70 of the Act is amended

(1) by inserting the following subparagraph after subparagraph 3.1 of the first paragraph:

“(3.2) enters into a contract for the loan of money with a lender even though he was notified by the Board that the lender or an officer of the lender was convicted of an offence under paragraph 2 of section 194 or was convicted of an offence under a fiscal law or an indictable offence connected with the lender’s business, or an indictable offence under sections 467.11 to 467.13 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46), unless he has obtained a pardon;”;

(2) by inserting the following paragraph before the last paragraph:

“For the purposes of subparagraph 3.2 of the first paragraph in respect of an offence under a fiscal law, the Board shall consider whether the serious nature of the offence or the frequency of offences justifies the issue of a notice.”

7. Section 196 of the Act is amended by replacing “except paragraph 5” in the first paragraph by “except paragraphs 1, 2 and 5”.

8. The Act is amended by inserting the following sections after section 196:

“196.1. Any person who contravenes paragraph 1 or 2 of section 194 is liable to a fine of \$650 to \$1,400 in the case of an individual and \$1,400 to \$5,000 in the case of a legal person.

On a second conviction, the minimum and maximum fines are doubled; on any subsequent conviction, they are tripled.

“196.2. An owner-builder or contractor who is a party to a contract for the loan of money even though the lender refuses or fails to provide the statement required under subparagraph 8.2 of the first paragraph of section 58 or subparagraph 8 of the first paragraph of section 60 or even though he is aware that the lender or one of his officers within the meaning of section 45 was convicted, in the five years preceding the loan, of an indictable offence connected with the lender’s business, or an indictable offence under

sections 467.11 to 467.13 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46), unless he has obtained a pardon, is guilty of an offence and liable to a fine of \$1,000 to \$10,000 in the case of an individual and \$2,000 to \$50,000 in the case of a legal person.

“196.3. A fine under this Act is indexed annually according to the percentage increase in the Consumer Price Index for Canada published by Statistics Canada under the Statistics Act (Revised Statutes of Canada, 1985, chapter S-19), for the 12 months of the preceding year in relation to the 12 months of the year preceding that year.

The resulting amount is increased to the nearest dollar if it contains decimals equal to or greater than 50; the amount is reduced to the nearest dollar if it contains decimals lower than 50.

The Board shall publish in the *Gazette officielle du Québec* the results of any indexation carried out under this section.”

9. Sections 83, 83.1 and 83.2 of the Act respecting labour relations, vocational training and workforce management in the construction industry (R.S.Q., chapter R-20) are amended by replacing “\$200 to \$400 in the case of an individual and \$800 to \$1,600” by “\$400 to \$800 in the case of an individual and \$1,600 to \$5,000”.

10. Section 84 of the Act is amended by replacing “\$650 to \$1,300” by “\$1,300 to \$5,000”.

11. The Act is amended by inserting the following section after section 113:

“113.1. Any person who uses intimidation or threats to cause an obstruction to or a slowdown or stoppage of activities on a job site is guilty of an offence and liable to a fine of \$1,000 to \$10,000 for each day or part of a day during which the offence continues.”

12. Section 115 of the Act is amended by replacing “\$700” in the second paragraph by “\$1,500”.

13. Section 115.1 of the Act is amended by replacing “not less than \$200 and not more than \$400 in the case of an individual, and not less than \$800 and not more than \$1,600” by “\$400 to \$800 in the case of an individual and \$1,000 to \$2,000”.

14. Section 119 of the Act is amended by replacing “\$700” by “\$1,400”.

15. Section 122 of the Act is amended by replacing “\$400 to \$1,600 and, in the case of a second or subsequent conviction, to a fine of \$800 to \$3,200” at the end of subsection 2 by “\$1,000 to \$2,500 and, in the case of a subsequent conviction, to a fine of \$1,600 to \$5,000”.

16. The Act is amended by inserting the following section after section 122:

“**122.1.** A fine under this Act is indexed annually according to the percentage increase in the Consumer Price Index for Canada published by Statistics Canada under the Statistics Act (Revised Statutes of Canada, 1985, chapter S-19), for the 12 months of the preceding year in relation to the 12 months of the year preceding that year.

The resulting amount is increased to the nearest dollar if it contains decimals equal to or greater than 50; the amount is reduced to the nearest dollar if it contains decimals lower than 50.

The Commission shall publish in the *Gazette officielle du Québec* the results of any indexation carried out under this section.”

17. The provisions of this Act come into force on 4 December 2009, except paragraphs 2 and 3 of section 1, paragraph 1 of section 2 as regards shareholders of the partnership or legal person applying for the issue of a licence, paragraphs 2, 4 and 5 of section 2, section 6 and section 8 insofar as it relates to section 196.2, which come into force on the date of coming into force of the first regulation made after that date under paragraph 8 of section 185 of the Building Act (R.S.Q., chapter B-1.1), as well as section 8 insofar as it relates to section 196.3, and section 16, which come into force on 1 January 2011.