



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 135

(2011, chapter 2)

An Act to ensure the continuity of the provision of legal services within the Government and certain public bodies

**Introduced 21 February 2011
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EXPLANATORY NOTES

The purpose of this Act is to ensure the continuity of the provision of legal services within the Government and certain public bodies. The Act also provides for the conditions of employment of advocates and notaries appointed in accordance with the Public Service Act and of criminal and penal prosecuting attorneys, in keeping with the salary parameters already agreed upon between the Government and most associations of employees in the public sector.

The advocates, notaries and attorneys concerned are required to cease participating in the current strike and resume work according to their normal work schedule and other applicable conditions of employment.

The collective agreement binding the advocates and notaries and the agreement binding the attorneys, both of which expired on 31 March 2010, are renewed with modifications in particular to increase the salary rates and scales.

Administrative, civil and penal provisions are prescribed to secure the continuity of the provision of the legal services concerned.

Bill 135

AN ACT TO ENSURE THE CONTINUITY OF THE PROVISION OF LEGAL SERVICES WITHIN THE GOVERNMENT AND CERTAIN PUBLIC BODIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

PURPOSE AND SCOPE

1. The purpose of this Act is to ensure the continuity of the provision of legal services within the Government, its departments, certain bodies and the National Assembly, and within the courts of justice and administrative tribunals. The Act also provides for the conditions of employment of advocates and notaries whose functions consist in providing such services and of criminal and penal prosecuting attorneys, in keeping with the salary parameters already agreed upon between the Government and most associations of employees in the public sector.

2. In this Act, unless the context indicates otherwise,

“association” means the Association des juristes de l’État certified under sections 66 and 67 of the Public Service Act (R.S.Q., chapter F-3.1.1) or the Association des procureurs aux poursuites criminelles et pénales recognized by the Director of Criminal and Penal Prosecutions under section 10 of the Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys (R.S.Q., chapter R-8.1.2) and any association that succeeds either of those associations;

“employee” means an advocate or a notary appointed in accordance with the Public Service Act or an attorney appointed under section 25 of the Act respecting the Director of Criminal and Penal Prosecutions (R.S.Q., chapter D-9.1.1) who is represented by an association on 20 February 2011 or who begins to be represented by an association after that date;

“public body” means the Government, a government department or a body in respect of which an association is certified or recognized to represent employees.

3. The National Assembly and any person appointed or designated by the National Assembly to exercise a function under its authority, whose personnel is appointed in accordance with the Public Service Act, and in respect of which

the Association des juristes de l'État is certified to represent employees, are considered to be public bodies for the purposes of this Act.

The same holds for the Director of Criminal and Penal Prosecutions and any person appointed or designated by the Government under an Act to an office determined in the Act, whose personnel is appointed in accordance with the Public Service Act, and in respect of which the Association des juristes de l'État is certified to represent employees.

DIVISION II

CONTINUITY OF SERVICES

4. All employees must, as of 1 p.m. on 22 February 2011, cease participating in the current strike and resume work according to their normal work schedule and other applicable conditions of employment.

All employees must, as of that time, perform all the duties attached to their respective functions, according to the applicable conditions of employment.

5. Employees are prohibited from participating in any concerted action involving a stoppage, slowdown, reduction or degradation of their normal professional or administrative activities or the effect of which is to prevent, hinder or reduce the provision of legal services or to delay criminal, penal, civil or administrative proceedings.

6. All public bodies, their officers and their representatives must, as of 1 p.m. on 22 February 2011, take the appropriate measures to ensure that normal legal services are provided by the employees.

7. The associations are prohibited from calling or continuing a strike or participating in any concerted action if the strike or concerted action involves a contravention by employees of section 4 or section 5.

Similarly, a lock-out is prohibited if it involves such a contravention.

8. The associations must take the appropriate measures to induce the employees they represent to comply with sections 4 and 5 and not to contravene sections 9 and 10.

9. No one may, by omission or otherwise, in any manner prevent or impede the provision of legal services by an employee or the performance by an employee of work related to such services, or directly or indirectly contribute to slowing down or delaying the performance of such work.

10. No one may hinder a person's access to a place if the person is authorized or has a duty to be there and if the place is a place where an employee must exercise his or her functions.

DIVISION III

CONDITIONS OF EMPLOYMENT

11. The collective agreement between a public body and the Association des juristes de l'État referred to in the second paragraph of section 5 of the Act respecting conditions of employment in the public sector (2005, chapter 43), which collective agreement expired on 31 March 2010, is renewed and, with the necessary modifications, is binding on the parties until 31 March 2015.

The conditions of employment stipulated in the collective agreement are modified to give effect to the provisions of the schedule.

12. The agreement on the conditions of employment of criminal and penal prosecuting attorneys referred to in the second paragraph of section 6 of the Act respecting conditions of employment in the public sector, which agreement expired on 31 March 2010, is renewed and, with the necessary modifications, is binding on the parties until 31 March 2015.

The conditions of employment stipulated in the agreement are modified to give effect to the provisions of the schedule.

DIVISION IV

ADMINISTRATIVE AND CIVIL MEASURES

§1. — *Union assessments*

13. On noting that its employees are not complying with section 4 or section 5 in sufficient number to ensure that its normal services are provided, a public body must suspend withholding any union assessment or dues or amount in lieu thereof from the salary of each of the employees represented by an association.

The suspension is effective for a period equal to 12 weeks per day or part of a day during which it is noted by the public body that the employees are not complying with section 4 or section 5 in sufficient number to ensure that its normal services are provided.

14. Despite any clause of a collective agreement or of an agreement, employees represented by an association referred to in section 13 are not required to pay any assessment, dues, contribution or other amount in lieu thereof to the association or to a third party for the benefit of the association for the duration of the suspension under section 13.

§2. — *Remuneration of employees*

15. No public body may remunerate an employee who contravenes section 4 or section 5 for the period during which the contravention occurred.

In addition, if the contravention consists in absence from work or participation in a work stoppage, the salary to be paid to the employee, under the applicable collective agreement or agreement, for work performed after the absence or work stoppage is reduced by an amount equal to the salary the employee would have received for each period of absence or work stoppage.

A public body must make the deductions resulting from the application of the second paragraph up to 20% of the salary per pay period and pay the sums deducted to a registered charity within the meaning of the Taxation Act (R.S.Q., chapter I-3) designated by order of the Government.

16. Any disagreement as to the application of section 15 is to be dealt with according to the grievance or disagreement settlement procedure, as applicable.

An employee is entitled to the reimbursement of the amount withheld only on showing that he or she complied with section 4 or section 5, as applicable, or was prevented from complying with that section despite having taken all reasonable means to do so and that the failure to comply with section 4 or section 5 was not part of any concerted action.

A person to whom a decision of a public body under this section is referred for arbitration or adjudication may only confirm or quash the decision, and may do so only on the basis of the second paragraph.

§3. — *Employees released to carry on union activities*

17. No public body may remunerate an employee released to carry on union activities for an association for a day or part of a day during which the association contravenes section 7.

In addition, the salary to be paid to the employee after the association's contravention, according to the applicable conditions of employment, is reduced by an amount equal to the amount that would have been paid to the employee had the contravention not occurred.

On noting a contravention referred to in the first paragraph, a public body must make the deductions resulting from the application of the second paragraph up to 20% of the salary per pay period, and pay the sums deducted to a registered charity within the meaning of the Taxation Act designated by order of the Government.

18. Any disagreement as to the application of section 17 is to be dealt with according to the grievance or disagreement settlement procedure, as applicable.

An employee is entitled to the reimbursement of the amount withheld under the second paragraph of section 17 only on showing that he or she did not

participate in the activities of the association that are related to the contravention.

A person to whom a decision of a public body under this section is referred for arbitration or adjudication may only confirm or quash the decision, and may do so only on the basis of the second paragraph.

19. On noting that an association has engaged in an act described in section 7, a public body must, after giving notice to the association, suspend, for the period determined under the third paragraph, paying the salary of any employee released during that period to carry on union activities for the association for the time during which the employee is released.

The first paragraph also applies if it is noted by a public body that the employees are not complying with section 4 or section 5 in sufficient number to ensure that its normal services are provided.

The suspension prescribed by this section is effective for a period equal to 12 weeks per day or part of a day during which the circumstances described in the first or second paragraph are noted by the public body.

§4. — *Work reorganization*

20. If the employees of a public body do not comply with section 4 or section 5 in sufficient number to ensure that normal legal services are provided, the Government may, by order, from the date, for the period and on the conditions it specifies and exclusively for the purpose of ensuring the provision of normal legal services by the public body, replace, amend or strike out any clause of the collective agreement or of the agreement between the public body and the association representing the employees in order to provide for the manner in which the public body is to fill a position, hire new employees and handle any matter related to work organization.

§5. — *Civil liability*

21. An association is liable for any damage caused during a contravention of section 4 or section 5 by employees it represents unless it proves that the damage is not a result of the contravention or that the contravention is not part of any concerted action.

22. A person who suffers damage because of an act in contravention of section 4 or section 5 may apply to the competent court to obtain compensation.

Despite article 1003 of the Code of Civil Procedure (R.S.Q., chapter C-25), if a person who suffered such damage brings a class action under Book IX of the Code by way of a motion in accordance with the second paragraph of article 1002 of the Code, the court authorizes the bringing of the class action if it is of the opinion that the person to whom the court intends to ascribe the

status of representative is in a position to adequately represent the members of the group described in the motion.

DIVISION V

PENAL PROVISIONS

23. A person, public body or association that contravenes section 4, 5, 6, 9 or 10 is guilty of an offence and is liable, for each day or part of a day during which the contravention continues, to a fine of

(1) \$100 to \$500 if the offender is an employee or a natural person other than a person referred to in paragraph 2;

(2) \$7,000 to \$35,000 if the offender is an officer, employee or representative of an association or an officer of a public body; and

(3) \$25,000 to \$125,000 if the offender is an association or a public body.

24. An association that contravenes the first paragraph of section 7 is guilty of an offence and is liable to the fine prescribed by paragraph 3 of section 23 for each day or part of day during which the contravention continues.

The same holds for a public body that does not comply with the second paragraph of section 7.

25. An association that contravenes section 8 is guilty of an offence and is liable to the fine prescribed by paragraph 3 of section 23 for each day or part of day during which a contravention of section 4 or section 5 continues.

26. A person who helps or, by encouragement, advice, consent, authorization or command, induces another person to commit an offence under this Act is guilty of an offence.

A person convicted under this section is liable to the same penalty as that prescribed for the offence the person helped or induced another person to commit.

DIVISION VI

FINAL PROVISIONS

27. The provisions of this Act relating to a collective agreement or an agreement referred to in Division III are deemed to be part of the collective agreement or agreement. They prevail over any conflicting provisions of the collective agreement or agreement.

28. Advocates and notaries appointed in accordance with the Public Service Act and transferred to the Agence du revenu du Québec on 1 April 2011 remain

employees within the meaning of this Act even if the Public Service Act no longer applies to them.

Advocates and notaries hired as such by the Agency after 31 March 2011 are employees within the meaning of this Act.

29. This Act does not restrict the application of the Pay Equity Act (R.S.Q., chapter E-12.001) or of any salary rate and scale increases arising out of adjustments resulting from the application of that Act.

30. The taking of an administrative measure or bringing of penal proceedings under any of sections 13 to 26 with respect to a person or a public body referred to in that section precludes the taking of a measure or bringing of proceedings with respect to the person or the public body under a similar provision of the Labour Code or the Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys on the same grounds.

31. The Minister who is chair of the Conseil du trésor is responsible for the administration of this Act.

32. Division II ceases to have effect on 31 March 2015 or on any earlier date set by the Government.

33. This Act comes into force on 22 February 2011.

SCHEDULE

(Sections 11 and 12)

Conditions of employment of employeesSalary parameters

1. The salary rates and scales for employees in force on the 31 March preceding each period specified below are increased by the following percentages:

- (1) for the period from 1 April 2010 to 31 March 2011, 0.5%;
- (2) for the period from 1 April 2011 to 31 March 2012, 0.75%;
- (3) for the period from 1 April 2012 to 31 March 2013, 1%;
- (4) for the period from 1 April 2013 to 31 March 2014, 1.75%; and
- (5) for the period from 1 April 2014 to 31 March 2015, 2%.

The percentage prescribed by subparagraph 3 of the first paragraph is increased, on 1 April 2012, by 1.25 times the difference between the cumulative increase in Québec's nominal gross domestic product (GDP) for the years 2010 and 2011, based on Statistics Canada data, and the forecast cumulative increase in Québec's nominal GDP for the same years, established at 3.8% for the year 2010 and 4.5% for the year 2011. The percentage increase so computed may not, however, be greater than 0.5%.

The percentage prescribed by subparagraph 4 of the first paragraph is increased, on 1 April 2013, by 1.25 times the difference between the cumulative increase in Québec's nominal GDP for the years 2010, 2011 and 2012, based on Statistics Canada data, and the forecast cumulative increase in Québec's nominal GDP for the same years, established at 3.8% for the year 2010, 4.5% for the year 2011 and 4.4% for the year 2012. The percentage increase so computed is reduced by the percentage increase granted on 1 April 2012 under the second paragraph. The sum of the percentage increase granted on 1 April 2012 under the second paragraph and the percentage increase granted on 1 April 2013 under this paragraph may not, however, be greater than 2%.

The percentage prescribed by subparagraph 5 of the first paragraph is increased, on 1 April 2014, by 1.25 times the difference between the cumulative increase in Québec's nominal GDP for the years 2010, 2011, 2012 and 2013, based on Statistics Canada data, and the forecast cumulative increase in Québec's nominal GDP for the same years, established at 3.8% for the year 2010, 4.5% for the year 2011, 4.4% for the year 2012 and 4.3% for the year 2013. The percentage increase so computed is reduced by the percentage increase granted on 1 April 2012 under the second paragraph and the percentage increase granted on 1 April 2013 under the third paragraph. The sum of the

percentage increase granted on 1 April 2012 under the second paragraph, the percentage increase granted on 1 April 2013 under the third paragraph and the percentage increase granted on 1 April 2014 under this paragraph may not, however, be greater than 3.5%.

2. The salary rates and scales for employees in force on 30 March 2015 are increased on 31 March 2015 by a percentage equal to the difference between the cumulative annual variations in the consumer price index for Québec, based on Statistics Canada data, for the collective agreement years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 and the cumulative salary parameters determined under paragraph 1, including adjustments arising from an increase in Québec's nominal GDP. The percentage increase so computed may not, however, be greater than 1%.

3. The percentage increases prescribed by paragraphs 1 and 2 apply to the bonuses and allowances of employees.

They do not apply to bonuses and allowances expressed as a percentage of salary or to bonuses and allowances granted as compensation for expenses incurred by employees in the exercise of their functions.

4. For the purposes of the second, third and fourth paragraphs of paragraph 1, the cumulative increase in Québec's nominal GDP is determined by the sum of the annual variations in Québec's nominal GDP for the years concerned.

For the purposes of paragraph 2, the annual variation in the consumer price index for Québec is the variation between the average indexes for the months of April to March of the collective agreement year concerned and the average indexes for the preceding months of April to March.

5. The percentage increases prescribed by subparagraphs 3, 4 and 5 of the first paragraph of paragraph 1 and those prescribed by the second, third and fourth paragraphs of that paragraph are paid on employees' pay within 60 days after the publication of the Statistics Canada data regarding Québec's nominal GDP for the calendar year preceding the period concerned.

The percentage increase prescribed by paragraph 2 is paid on employees' pay within 60 days after the publication of the Statistics Canada data regarding the consumer price index for Québec for March 2015.

6. The chair of the Conseil du trésor publishes a notice of the percentage increase in the *Gazette officielle du Québec* within 60 days after the publication of the Statistics Canada data regarding Québec's nominal GDP for the years 2011, 2012 and 2013, and regarding the consumer price index for Québec for March 2015.

Special work schedule

7. The chief executive officer of a public body may, if need be, set a special work schedule for an employee. Such a schedule may not exceed 40 hours per week. All hours worked are to be paid at the hourly rate. A special work schedule does not affect the salary scale applicable to the employee or the manner in which the employee's hourly rate is determined.

The remuneration paid for hours worked beyond 35 hours is deemed not to be part of the annual salary but is pensionable for pension plan purposes.