



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 40

(2011, chapter 31)

An Act to repeal the Act to ensure the continuity of the provision of legal services within the Government and certain public bodies and to amend the Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys

**Introduced 9 November 2011
Passed in principle 16 November 2011
Passed 1 December 2011
Assented to 2 December 2011**

EXPLANATORY NOTES

This Act repeals the Act to ensure the continuity of the provision of legal services within the Government and certain public bodies and amends the Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys to establish a mandatory preliminary process for determining the remuneration and certain conditions of employment of criminal and penal prosecuting attorneys and to introduce a new bargaining process with respect to other conditions of employment.

To that end, a committee is established, one of whose functions will be to ascertain, every four years, whether the remuneration of attorneys and certain of their conditions of employment with pecuniary value are adequate. After receiving observations from the Government and the attorneys, the committee will make recommendations to the Government to be tabled in the National Assembly. The Assembly may approve, amend or reject the committee's report, by way of a resolution stating the reasons on which it is based, and the Government must implement the resolution. Should the Assembly fail to adopt the resolution within the time specified in this Act, the Government must implement the committee's recommendations.

In addition, the bargaining plan is amended with respect to conditions of employment not under the responsibility of the committee. If the parties fail to come to an agreement within 270 days following the beginning of the negotiation stage, the disagreement will be submitted to an arbitrator who will make recommendations to the Government. The Government may approve, amend or reject the recommendations, by way of a decision stating the reasons on which it is based.

Lastly, the attorneys' right to strike and the employer's right to a lock-out are removed.

LEGISLATION AMENDED BY THIS ACT:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Public Administration Act (R.S.Q., chapter A-6.01);

- Act respecting the Centre de services partagés du Québec (R.S.Q., chapter C-8.1.1);
- Labour Code (R.S.Q., chapter C-27);
- Act respecting contracting by public bodies (R.S.Q., chapter C-65.1);
- Sustainable Development Act (R.S.Q., chapter D-8.1.1);
- Act respecting the Director of Criminal and Penal Prosecutions (R.S.Q., chapter D-9.1.1);
- Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30);
- Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys (R.S.Q., chapter R-8.1.2);
- Act respecting Services Québec (R.S.Q., chapter S-6.3).

LEGISLATION REPEALED BY THIS ACT:

- Act to ensure the continuity of the provision of legal services within the Government and certain public bodies (2011, chapter 2).

Bill 40

AN ACT TO REPEAL THE ACT TO ENSURE THE CONTINUITY OF THE PROVISION OF LEGAL SERVICES WITHIN THE GOVERNMENT AND CERTAIN PUBLIC BODIES AND TO AMEND THE ACT RESPECTING THE COLLECTIVE BARGAINING PLAN OF CRIMINAL AND PENAL PROSECUTING ATTORNEYS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The title of the Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys (R.S.Q., chapter R-8.1.2) is replaced by the following title:

“Act respecting the process for determining the remuneration of criminal and penal prosecuting attorneys and respecting their collective bargaining plan”.

2. Section 12 of the Act is amended by replacing the first paragraph by the following paragraph:

“**12.** Except as regards matters listed in section 19.1, the Director, in the name of the Government and with the authorization of the Conseil du trésor, shall negotiate for the purpose of entering into an agreement with the association regarding the conditions for the appointment and the conditions of employment of the attorneys represented by the association. Such an agreement has a four-year term.”

3. Section 12.2 of the Act is amended

(1) by replacing “conciliation officer” in the first paragraph by “mediator”;

(2) by replacing the last paragraph by the following paragraph:

“Upon receiving the request, the Minister of Labour must designate a mediator. Following an intervention, the mediator must give the parties and the Minister a report. The Minister shall make the report public within 10 days after receiving it.”

4. Section 12.3 of the Act is amended by replacing “conciliation officer” by “mediator”.

5. Sections 12.4 to 12.13 of the Act are repealed.

6. The Act is amended by inserting the following sections after section 12.13:

“12.14. Where the Director and the association fail to come to an agreement within 270 days following the beginning of the negotiation stage, their disagreement is submitted to an arbitrator.

The Director and the association shall designate an arbitrator from a list jointly drawn up by them before the expiry of the agreement.

“12.15. The arbitrator must hear the representations made by the Director and the association. The arbitrator’s decision must be transmitted to the parties on the last working day preceding the 181st day following the expiry of the agreement.

“12.16. The decision rendered by the arbitrator constitutes a recommendation to the Government.

Within 30 days after receiving the recommendation, the Government must approve, amend or reject all or part of the arbitrator’s recommendation. The Government must make public its decision and the reasons on which it is based.

The decision of the Government has the same effect as an agreement signed by the Director and the association.”

7. Section 17 of the Act is amended by inserting “a strike or” after “resorting to”.

8. Section 19 of the Act is replaced by the following section:

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

9. The Act is amended by inserting the following division after Division III:

“DIVISION III.1

“DETERMINATION OF REMUNERATION

“19.1. A committee on the remuneration of criminal and penal prosecuting attorneys is hereby established.

The function of the committee is to ascertain, every four years, whether the remuneration, group plans, conditions of employment with pecuniary value, conditions of employment that concern industrial accidents and occupational

diseases, and work schedules are adequate. Its functions do not include evaluating pension plans or parental rights.

“19.2. The committee has three members, appointed by the Government for a one-year term.

The association and the Government shall designate, by mutual agreement, the members of the committee including the chair.

Failing agreement on the choice of a chair, the Government shall appoint the chair after consulting the Chief Justice of Québec and the association. Failing agreement on the choice of the other members, the association and the Government shall each appoint one.

Attorneys, persons appointed in accordance with the Public Service Act (chapter F-3.1.1) and judges may not sit on the committee.

“19.3. The Government proceeds with the appointment of the members of the committee at least 90 days before the expiry of the agreement.

“19.4. When a member dies, resigns or is otherwise unable to act, the Government shall appoint a substitute member in the manner set out in section 19.2. The term of the substitute member corresponds to the unexpired portion of the term of the original member.

“19.5. The Government shall determine, by order, the fees to be paid to the members of the committee, and the cases and conditions in which and extent to which the expenses incurred by the members in the exercise of their functions are to be reimbursed.

“19.6. The chair of the committee shall manage the financial resources of the committee within the scope of the applicable legislation, regulations and rules.

Within such scope, the chair may call upon the support services and professional services considered necessary by the chair to ensure the successful discharge of the committee’s functions. To that end the chair may, in particular, enter into an agreement concerning the temporary assignment of members of the public service to the committee.

Subject to the first paragraph, the committee may give experts the mandate to examine any matter it submits to them.

“19.7. The chair of the committee has the powers vested in a chief executive officer by the Financial Administration Act (chapter A-6.001) with regard to applications to charge a commitment and applications for payment.

Sections 30 and 31 of that Act do not apply to the committee.

“**19.8.** Chapter III, Chapter IV with the exception of section 53, and sections 73 and 74 of the Public Administration Act (chapter A-6.01) apply to the committee.

“**19.9.** Each fiscal year of the committee ends on 31 March.

“**19.10.** As soon as the committee has been established, the chair of the committee shall submit to the Minister of Justice the committee’s budget estimates for the current fiscal year and the subsequent fiscal year.

The chair of the committee shall also submit supplementary budget estimates to the Minister when, during the fiscal year, the committee’s expenses exceed the budget estimates.

The Minister of Justice shall table the committee’s budget estimates or, if applicable, its supplementary budget estimates in the National Assembly within 10 days of receiving them or, if the Assembly is not sitting, within 10 days of resumption.

“**19.11.** The books and accounts of the committee are audited by the Auditor General.

“**19.12.** The sums required for the remuneration of members and for any other operating costs are taken out of the Consolidated Revenue Fund.

“**19.13.** The committee, within the scope of its functions, receives observations from the association and the Government.

Where it considers it relevant, the committee may invite any person or body to submit observations.

“**19.14.** The committee shall consider the following factors:

- (1) the particularities of attorneys’ functions;
- (2) the need to attract advocates possessing the skills and qualifications required for the office of attorney;
- (3) the conditions of employment and the total remuneration per hour of work of attorneys in Québec and elsewhere in Canada, taking differences in the cost of living and collective wealth into account;
- (4) the responsibilities of attorneys in Québec and elsewhere in Canada, their workload, the requirements of employers, salary structures and difficulties in attracting and retaining attorneys;
- (5) the economic situation prevailing in Québec, the general state of the Québec economy and the state of Québec’s public finances;

(6) the conditions of employment and the remuneration of advocates in Québec's private sector and those of other employees of the State; and

(7) any other factor considered relevant by the committee.

“19.15. The committee shall make a report to the Government containing the recommendations it considers appropriate on the last working day preceding the 181st day following the expiry of the agreement.

The Minister of Justice shall table the report in the National Assembly within 10 days of receiving it or, if the Assembly is not sitting, within 10 days of resumption.

“19.16. The National Assembly may approve, amend or reject some or all of the committee's recommendations, by way of a resolution stating the reasons on which it is based. The Government shall take, with diligence, the necessary steps to implement the resolution and, if need be, do so retroactively to the expiry date of the agreement.

If the National Assembly fails to adopt a resolution on or before the 45th day of sitting following the day on which the committee's report is tabled, the Government must take, with diligence, the necessary steps to implement the recommendations.

The conditions of employment that are the object of the National Assembly resolution or, if there is none, of the committee's recommendations are deemed to be part of the agreement referred to in section 12.”

10. Sections 20 to 23, 25 and 28 of the Act are repealed.

11. Section 83.1 of the Financial Administration Act (R.S.Q., chapter A-6.001) is amended by inserting “the committee on the remuneration of criminal and penal prosecuting attorneys,” after “except” in subparagraph 1 of the first paragraph.

12. Schedule 1 to the Act is amended by inserting the following in alphabetical order:

“Committee on the remuneration of criminal and penal prosecuting attorneys”.

13. Section 4 of the Public Administration Act (R.S.Q., chapter A-6.01) is amended by replacing “or the committee on the remuneration of the judges of the Court of Québec and the municipal courts” in the last paragraph by “, the committee on the remuneration of the judges of the Court of Québec and the municipal courts or the committee on the remuneration of criminal and penal prosecuting attorneys”.

14. Section 10 of the Act respecting the Centre de services partagés du Québec (R.S.Q., chapter C-8.1.1) is amended by inserting “to the committee on the remuneration of criminal and penal prosecuting attorneys,” after “does not apply” in the last paragraph.

15. Section 115.2.1 of the Labour Code (R.S.Q., chapter C-27) is amended by striking out “, the Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys (chapter R-8.1.2)”.

16. Schedule I to the Code is amended by replacing paragraph 26 by the following paragraph:

“(26) section 19 of the Act respecting the process for determining the remuneration of criminal and penal prosecuting attorneys and respecting their collective bargaining plan;”.

17. Section 6 of the Act respecting contracting by public bodies (R.S.Q., chapter C-65.1) is amended by replacing “and the committee on the remuneration of the judges of the court of Québec and municipal courts” by “, the committee on the remuneration of the judges of the Court of Québec and the municipal courts and the committee on the remuneration of criminal and penal prosecuting attorneys”.

18. Section 3 of the Sustainable Development Act (R.S.Q., chapter D-8.1.1) is amended by inserting “the committee on the remuneration of criminal and penal prosecuting attorneys,” after “municipal courts,” in the last paragraph.

19. Section 87 of the Act respecting the Director of Criminal and Penal Prosecutions (R.S.Q., chapter D-9.1.1) is amended by replacing “Act respecting the collective bargaining plan of criminal and penal prosecuting attorneys” in paragraph 3 by “Act respecting the process for determining the remuneration of criminal and penal prosecuting attorneys and respecting their collective bargaining plan”.

20. Section 3.0.1 of the Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30) is amended by inserting “committee on the remuneration of criminal and penal prosecuting attorneys, the” after “apply to the” in the last sentence of the last paragraph.

21. Section 8 of the Act respecting Services Québec (R.S.Q., chapter S-6.3) is amended by inserting “, to the committee on the remuneration of criminal and penal prosecuting attorneys” after “municipal courts” in the last paragraph.

22. The Act to ensure the continuity of the provision of legal services within the Government and certain public bodies (2011, chapter 2) ceases to have effect, in respect of a group of employees and of their association to which that Act applies, on the date of signing of a collective agreement or on the date of coming into force of an agreement that binds them, as the case may be.

The Act is repealed on the date on which it ceases to have effect in respect of all the groups and associations to which it applies.

The chair of the Conseil du trésor shall publish a notice of the date of the repeal in Part 2 of the *Gazette officielle du Québec*.

23. This Act comes into force on 2 December 2011.