



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 75

(2012, chapter 17)

An Act to confer certain powers of inspection and seizure on the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry

Introduced 15 May 2012

Passed in principle 29 May 2012

Passed 6 June 2012

Assented to 6 June 2012

EXPLANATORY NOTES

This Act grants the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry additional powers over and above those provided for in the Act respecting public inquiry commissions.

Among other things, the commissioners are given the power to authorize a person to require the production of any thing or any document or information, to carry out inspections and to apply to a justice of the peace for an authorization to enter a place to search for and seize any thing or document relevant to the carrying out of the Commission's mandate, if entry into the place for inspection purposes has been denied or for any other reasonable cause.

LEGISLATION AMENDED BY THIS ACT:

- Tax Administration Act (R.S.Q., chapter A-6.002).

Bill 75

AN ACT TO CONFER CERTAIN POWERS OF INSPECTION AND SEIZURE ON THE COMMISSION OF INQUIRY ON THE AWARDING AND MANAGEMENT OF PUBLIC CONTRACTS IN THE CONSTRUCTION INDUSTRY

AS the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry was established, in accordance with section 1 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37), by Order in Council 1119-2011 dated 9 November 2011;

AS the purpose of this Act is to give the Commission certain additional powers over and above those provided for in the Act respecting public inquiry commissions;

AS the powers conferred by this Act must not be exercised so as to interfere with any police investigation or any judicial proceedings arising from such an investigation or to compromise legally recognized privileges;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

- 1.** This Act applies to the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry.
- 2.** An advocate authorized in writing by a commissioner may require the production, within a reasonable time of not less than five days, of any thing or any document or information relevant to the carrying out of the Commission's mandate, in order to examine it or make copies of it, as applicable.
- 3.** A commissioner may authorize a person in writing to enter a place at any reasonable hour to inspect it, with the occupant's consent, if the commissioner considers that the inspection will assist the Commission in carrying out its mandate.

During the inspection, the authorized person may, with the occupant's consent,

- (1) examine and make copies of the books, registers, accounts, records, files and other documents on the premises that are relevant to the carrying out of the Commission's mandate; and

(2) obtain any information relevant to the carrying out of the Commission's mandate and the production of any document relating to the subject of the mandate.

The authorized person may also request reasonable assistance from the persons present in order to facilitate the inspection, including assistance in accessing documents stored on technology-based media.

4. An advocate or peace officer authorized in writing by a commissioner may, without prior notice to the persons concerned, apply to a justice of the peace for an authorization to enter a place in order to search for and seize any thing or document on the premises that is relevant to the carrying out of the Commission's mandate.

The justice of the peace may hear the application *ex parte* and grant the application if he or she is satisfied on the basis of a sworn statement by the authorized person that there are reasonable grounds for believing that there is on the premises a thing or document relevant to the carrying out of the Commission's mandate and for believing that consent to the inspection of the place has been denied or entry into the place without prior notice is necessary.

The authorization must specify the conditions the justice of the peace considers appropriate and just in the circumstances. The justice of the peace may, among other things, order the persons present on the premises to provide reasonable assistance in order to facilitate acting on the authorization.

5. The authorization is acted on by a peace officer, upon its presentation to the person present on the premises, within the time specified by the justice of the peace, if any, but not later than 15 days after it is issued.

The authorization is acted on at any reasonable hour and the peace officer may, for that purpose, be accompanied by the persons designated in the authorization and use whatever force is necessary.

Within 15 days of the time for acting on the authorization, the peace officer must report to the justice of the peace who granted the authorization, whether or not it has been acted on.

6. The peace officer who seizes a thing or document under this Act draws up minutes of the seizure.

7. The minutes must include

- (1) the date and place of the seizure;
- (2) the circumstances of and grounds for the seizure;
- (3) a description of the thing or document seized;

- (4) any information that may help identify the owner or the person from whom the thing or document has been seized;
- (5) the name and title of the seizing peace officer; and
- (6) the date of the authorization granted by a justice of the peace.

8. The minutes of the seizure are attached to the report delivered to the justice of the peace and a copy of the minutes is given to the person from whom the thing or document was seized.

9. Any thing or document seized by a person authorized by a commissioner must be returned to the person from whom it was seized as soon as possible, after a copy is made, if applicable.

Under exceptional circumstances, the Commission may keep the originals of the seized things or documents for a reasonable period of time if required for the carrying out of its work.

If the person from whom the thing or document was seized is unknown or untraceable, it is released to the Minister of Revenue as soon as possible after the seizure, together with a statement describing it and setting out, if available, the name and last known address of the person from whom it was seized.

The Unclaimed Property Act (R.S.Q., chapter B-5.1) applies to property so released to the Minister of Revenue.

10. Whoever, without lawful excuse, refuses, fails or neglects to produce a document or thing or to provide information required under section 2 is guilty of an offence and is liable to a fine of \$1,000 to \$10,000 in the case of a natural person and \$3,000 to \$30,000 in other cases.

11. Whoever prevents an authorization granted under section 4 from being acted on is guilty of an offence and is liable to a fine of \$2,500 to \$25,000 in the case of a natural person and \$7,500 to \$75,000 in other cases.

12. The authorization required to act under sections 2, 3 and 4 must be obtained each time powers set out in those sections are to be exercised.

13. The commissioners and persons authorized by the commissioners to exercise powers set out in this Act have the immunity provided for in the Act respecting public inquiry commissions (R.S.Q., chapter C-37).

TAX ADMINISTRATION ACT

14. Section 69.1 of the Tax Administration Act (R.S.Q., chapter A-6.002) is amended by adding the following subparagraph after subparagraph z of the second paragraph:

“(z.1) the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, established by Order in Council 1119-2011 dated 9 November 2011, for the carrying out of the Commission’s mandate.”

15. Section 69.3 of the Act is amended by replacing “section 69.1 or 69.2” in the first paragraph by “section 69.1, except subparagraph z.1 of the second paragraph, or section 69.2”.

16. Section 69.8 of the Act is amended by replacing “x and y” in the portion of the first paragraph before subparagraph *a* by “x, y and z.1”.

17. This Act comes into force on 6 June 2012.