



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 26

(2015, chapter 6)

An Act to ensure mainly the recovery of amounts improperly paid as a result of fraud or fraudulent tactics in connection with public contracts

**Introduced 3 December 2014
Passed in principle 17 February 2015
Passed 24 March 2015
Assented to 1 April 2015**

EXPLANATORY NOTES

This Act provides for exceptional measures to make possible the recovery of amounts improperly paid due to fraud or fraudulent tactics in the course of the tendering, awarding or management of public contracts.

The Act provides that the Minister of Justice must publish in the Gazette officielle du Québec a voluntary, fixed-term reimbursement program to allow the reimbursement of such amounts in relation to which there may have been fraud or fraudulent tactics.

The Minister is authorized to act on behalf of a public body within the scope of this program, and may transact and grant a discharge in that capacity on behalf of a public body.

Within the scope of the program, the Government designates a person to act as director. One of the director's duties is to attempt to bring the parties to an agreement.

Moreover, the Act establishes certain special rules applicable to judicial proceedings to recover such amounts that may be instituted by a public body. It establishes certain presumptions, authorizes, on certain conditions, the reinstatement of actions previously dismissed on the grounds that the right to recover was prescribed, and extends the prescription period applicable to the right to institute proceedings.

A fund dedicated to financing activities carried out for the purposes of the Act is established.

Amendments are also made to the Act respecting contracting by public bodies so that an application for authorization to enter into a contract filed by an enterprise found guilty of certain offences will not be automatically refused by the Autorité des marchés financiers.

In addition, the Act integrates election law offences that currently result in ineligibility for public contracts under such laws to the public contract ineligibility regime set out in the Act respecting contracting by public bodies.

Lastly, the Act includes transitional and final provisions, in particular as regards the cessation of effect of certain provisions.

LEGISLATION AMENDED BY THIS ACT:

- Building Act (chapter B-1.1);
- Act respecting contracting by public bodies (chapter C-65.1);
- Act respecting elections and referendums in municipalities (chapter E-2.2);
- Act respecting school elections (chapter E-2.3);
- Election Act (chapter E-3.3).

Bill 26

AN ACT TO ENSURE MAINLY THE RECOVERY OF AMOUNTS IMPROPERLY PAID AS A RESULT OF FRAUD OR FRAUDULENT TACTICS IN CONNECTION WITH PUBLIC CONTRACTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND DEFINITIONS

1. This Act provides for exceptional measures for the reimbursement and recovery of amounts improperly paid as a result of fraud or fraudulent tactics in the course of the tendering, awarding or management of public contracts.

2. For the purposes of this Act,

(a) “**public contract**” means a contract between a public body and an enterprise;

(b) “**enterprise**” means a legal person established for a private interest, a general, limited or undeclared partnership, an association or a natural person who operates a sole proprietorship;

(c) “**public body**” means a body described in section 4, 7 or 7.1 of the Act respecting contracting by public bodies (chapter C-65.1) as well as a municipal body within the meaning of section 5 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).

CHAPTER II

REIMBURSEMENT PROGRAM

3. The Minister publishes in the *Gazette officielle du Québec* a voluntary, fixed-term reimbursement program to make it possible for an enterprise or a natural person mentioned in section 10 to reimburse certain amounts improperly paid in the course of the tendering, awarding or management of a public contract in relation to which there may have been fraud or fraudulent tactics.

4. The reimbursement program the Minister intends to establish must be published as a draft program in the *Gazette officielle du Québec*, together with a notice stating the period that must elapse before the program may be

established and during which an interested person may send comments to the person specified in the notice.

5. Within the scope of the reimbursement program, the Minister acts on behalf of a public body. For that purpose, the Minister may transact and validly grant a discharge regarding the contracts concerned.

A public body may, however, in the cases, on the conditions and in the manner determined by the Minister, intervene within the scope of the program, in particular by participating in a vote of all the public bodies covered by a settlement proposal made by an enterprise or natural person mentioned in section 10.

6. The Government designates a person to act as program director. The person must exercise the functions of office in an impartial manner.

One of the director's duties is to attempt to bring the Minister and an enterprise or natural person mentioned in section 10 to an agreement.

For that purpose, the director must inform them of the scope of sections 7 and 8 and make recommendations to the Minister with regard to any reimbursement proposals received.

7. Anything said or written within the framework of the program is confidential and may not be admitted in evidence unless the Minister and the enterprise or natural person mentioned in section 10 agree otherwise.

8. The program director, the Minister and the enterprise or natural person mentioned in section 10 cannot be compelled to disclose anything they hear or learn within the framework of the program. Nor can they be compelled to produce a document prepared or obtained within that framework before a court of justice, before a person or body of the administrative branch exercising adjudicative functions or before any other person or body having the power to summon witnesses, gather evidence and require the production of documents.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person may have access to such a document.

9. The program director cannot be prosecuted for acts performed in good faith in the exercise of the functions of office.

CHAPTER III

SPECIAL RULES APPLICABLE TO JUDICIAL PROCEEDINGS

10. Any enterprise or natural person who has, in any capacity, participated in fraud or fraudulent tactics in the course of the tendering, awarding or

management of a public contract is presumed to have caused injury to the public body concerned.

In such a case, the officers of the enterprise in office at the time the fraud or fraudulent tactics occurred are held liable unless they prove that they acted with the care, diligence and skill that a prudent person would have exercised in similar circumstances.

The directors of the enterprise in office at the time the fraud or fraudulent tactics occurred are also held liable if it is established that they knew or ought to have known that fraud or fraudulent tactics were committed in relation to the contract concerned, unless they prove that they acted with the care, diligence and skill that a prudent person would have exercised in similar circumstances.

The enterprises and natural persons referred to in this section are solidarily liable for the injury caused, unless such liability is waived by the public body.

11. The injury is presumed to correspond to the amount claimed by the public body concerned for the contract concerned if the amount does not exceed 20% of the total amount paid for that contract.

The public body may, subject to providing proof, claim an amount greater than that determined under the first paragraph.

Any amount granted by the court under this section bears interest from the date the work is accepted by the public body concerned for the contract concerned, at the rate determined under section 28 of the Tax Administration Act (chapter A-6.002).

12. The Minister may, on behalf of a public body, bring an action against an enterprise or natural person referred to in section 10 after informing the public body of its intention and giving the public body reasonable time to bring an action itself.

In such a case, the Minister may transact on an amount the Minister claims under the first paragraph and validly grant a discharge regarding the contracts concerned.

13. The public body's claim in an action brought under this chapter confers on the public body a legal hypothec which may, on authorization, be registered on the property of any enterprise or natural person referred to in section 10.

The application for authorization is made to a judge in chambers. In urgent cases, it may be made without notice to the adverse party. If the authorization is granted, it must be served without delay on the enterprise or the natural person concerned.

The judge grants the authorization if the body's claim appears to be well-founded and if there is reason to fear that recovery of the claim might be jeopardized without such authorization.

14. A court that allows an action to be brought under this chapter must add a lump sum equal to 20% of any amount granted for injury, to cover expenses incurred for the purposes of this Act. The amount bears interest from the time the action is brought.

15. An application addressed to a court or to a judge in chambers under this chapter is heard and decided by preference.

16. An action to repair injury caused after (*insert the date that is 20 years before the date of coming into force of Chapter III*) to a public body by fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract may not, if in progress on (*insert the date of coming into force of Chapter III*) or instituted within five years after that date, be dismissed on the grounds that the right is prescribed.

Any such actions dismissed on those grounds before (*insert the date of coming into force of Chapter III*) may be instituted again within five years after that date.

In addition, during a proceeding, no measure necessary or useful to preserve the public body's rights, including an unenforceability action, may be dismissed on the grounds that the right is prescribed or extinguished.

In such cases, this Act has the retroactive effect necessary to ensure its application.

17. A court of justice has exclusive jurisdiction to hear applications brought under this chapter. However, persons or bodies exercising adjudicative functions retain their authority with respect to any such application made by a public body exclusively against one of its employees. In such a case, this Act applies with the necessary modifications.

CHAPTER IV

MISCELLANEOUS PROVISIONS

18. This Act is public policy.

19. The Minister must, within six months after the end of the reimbursement program described in Chapter II, report to the Government on the implementation of the program. The report must include the names of the enterprises or natural persons mentioned in section 10 who participated in the program, the names of the public bodies involved, and the total amount reimbursed.

The report is tabled within the next 30 days in the National Assembly or, if the Assembly is not sitting, within 30 days of resumption.

20. The Government may determine rules for the apportionment between the Minister and a public body of any amount recovered under Chapter II and section 12, in proportion to the amounts paid by the public body for a particular contract.

21. A public body is required to cooperate with the Minister in achieving the purpose of this Act. To that end, it must, in particular, provide any document or information requested by the Minister in relation to a public contract.

22. No recourse in warranty or recursory action may be brought against an enterprise or natural person mentioned in section 10 who has been granted a discharge for a claim arising from a contract described in section 3.

23. Despite any inconsistent provision of an Act, any value accrued or any benefit paid or granted to an employee of a public body or to an elected officer under a pension plan is seizable for the execution of a final judgment in an action brought under Chapter III, in the cases, on the conditions and in the manner determined by government regulation.

24. The Government may, by regulation, take any measure necessary or useful for carrying out this Act and fully achieving its purpose.

CHAPTER V

PUBLIC CONTRACTS FUND

25. The Public Contracts Fund is established at the Ministère de la Justice.

The Fund is dedicated to financing activities carried out by the Minister for the purposes of this Act.

26. The following are credited to the Fund:

- (1) the amounts paid to the Minister under this Act;
- (2) the amounts transferred to it by a minister out of the appropriations granted for that purpose by Parliament;
- (3) the amounts transferred to it by the Minister of Finance under sections 53 and 54 of the Financial Administration Act (chapter A-6.001);
- (4) the gifts, legacies and other contributions paid into it to further the achievement of its purpose; and
- (5) the revenue generated by the amounts credited to it.

27. The amounts required to pay any expense, including the expenses incurred by the Minister for the purposes of this Act, and any cost related to an investment, and that are necessary to achieve the purpose to which the Fund is dedicated are debited from the Fund.

28. Any surplus accumulated by the Fund is transferred to the general fund on the dates and to the extent determined by the Government.

CHAPTER VI

AMENDING PROVISIONS

BUILDING ACT

29. The Building Act (chapter B-1.1) is amended by inserting the following sections after section 65.1:

“65.1.0.1. Section 65.1 does not apply if

(1) the offence or indictable offence that led to the conviction has already been considered by the Autorité des marchés financiers (the Authority) under Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1) and, when it was considered, an authorization was granted to the licence holder or the authorization held by the licence holder was not revoked or was renewed; or

(2) the conviction and the offence or indictable offence that led to it have not yet been considered by the Authority in connection with an application submitted to it under Chapter V.2 of the Act respecting contracting by public bodies and currently under examination, or following an advisory opinion provided under section 21.32 of that Act.

The Authority must send the Board the information required for the purposes of the first paragraph.

“65.1.0.2. The holder of a restricted licence may at any time file an application for authorization with the Authority as provided for in Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1).

The granting by the Authority of such an authorization entails, despite any inconsistent provision, the removal of the restriction on the licence.”

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

30. The Act respecting contracting by public bodies (chapter C-65.1) is amended by inserting the following section after section 21.2:

“21.2.0.1. No entry may be made under section 21.1 or the first paragraph of section 21.2 in the register provided for in section 21.6 if

(1) the offence that led to the finding of guilty has already been considered by the Autorité des marchés financiers (the Authority) under Chapter V.2 and, when it was considered, an authorization was granted to the contractor or the authorization held by the contractor was not revoked or was renewed; or

(2) the finding of guilty and the offence that led to it have not yet been considered by the Authority in connection with an application submitted to it under Chapter V.2 and currently under examination, or following an advisory opinion provided under section 21.32.

The Authority must send the Chair of the Conseil du trésor the information required for the purposes of the first paragraph.”

31. Section 21.26 of the Act is amended, in the first paragraph,

(1) by striking out subparagraph 1;

(2) by replacing “holding 50% or more of the voting rights attached to the shares that may be exercised under any circumstances” in subparagraph 2 by “is a natural person who holds 50% or more of the voting rights attached to the shares that may be exercised under any circumstances and who”;

(3) by striking out subparagraphs 4 to 7.

32. Section 21.28 of the Act is amended by inserting the following subparagraphs before subparagraph 1 of the second paragraph:

“(0.1) whether the enterprise has, in the preceding five years, been found guilty of an offence listed in Schedule I;

“(0.2) whether the enterprise has, in the preceding five years, been found guilty by a foreign court of an offence which, if committed in Canada, could have resulted in criminal or penal proceedings for an offence listed in Schedule I;

“(0.3) whether the enterprise has, in the preceding two years, been ordered to suspend work by a decision enforceable under section 7.8 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20);

“(0.4) whether the enterprise has, in the preceding two years, been ordered by a final judgment to pay an amount claimed under subparagraph c.2 of the first paragraph of section 81 of that Act;”.

33. The Act is amended by adding the following section after section 58.1, enacted by section 23 of chapter 25 of the statutes of 2012:

“58.2. A contractor named in the register of enterprises ineligible for public contracts kept under Division II of Chapter V.1 for a reason other than

those provided for in section 88 of the Integrity in Public Contracts Act (2012, chapter 25) may at any time file an application for authorization with the Authority as provided for in Chapter V.2.

The granting by the Authority of such an authorization entails, despite any inconsistent provision, the removal of the contractor's name from the register.

The Authority must send the Chair of the Conseil du trésor the information required for the purposes of this section.”

34. Schedule I to the Act is amended by inserting the following in the alphanumerical order of the Acts and regulations concerned:

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Act respecting elections and referendums in municipalities (chapter E-2.2)	610 (2)	Making an illegal contribution referred to in paragraph 1 of section 610
	610 (3)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	610 (4)	Making a false declaration concerning a contribution
	610.1 (2)	Making an illegal gift of money referred to in paragraph 1 of section 610.1
Act respecting school elections (chapter E-2.3)	219.8 (2)	Making an illegal contribution referred to in paragraph 1 of section 219.8
	219.8 (3)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	219.8 (4)	Making a false declaration concerning a contribution

Election Act (chapter E-3.3)	564.1 (1)	Making a false declaration concerning a contribution
	564.1 (2)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	564.2	Contravening section 87 – contribution made by a person who is not an elector, contribution made in favour of an unauthorized entity or contribution not in accordance with Division II of Chapter II of Title III
		Contravening section 90 – involuntary contribution of an elector, contribution not made out of the elector’s property or contribution made with compensation or for consideration or a reimbursement
		Contravening section 91 – contribution exceeding the maximum amount allowed
Contravening the first paragraph of section 127.7 – contribution made by a person who is not an elector		
Contravening the third paragraph of section 127.7 – contribution exceeding the maximum amount allowed		

Contravening the first paragraph of section 127.8 with regard to section 90 – involuntary contribution of an elector, contribution not made out of the elector’s property or contribution made with compensation or for consideration or a reimbursement”.

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

35. Sections 641.2 to 641.5 of the Act respecting elections and referendums in municipalities (chapter E-2.2) are repealed.

36. The Act is amended by inserting the following section after section 648:

“**648.1.** The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this Title and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences described in this Title and listed in Schedule I to that Act.”

ACT RESPECTING SCHOOL ELECTIONS

37. Sections 221.1.2 to 221.1.5 of the Act respecting school elections (chapter E-2.3) are repealed.

38. The Act is amended by inserting the following section after section 223.4:

“**223.5.** The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this chapter and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by

public bodies concerning findings of guilty for offences under this chapter that are listed in Schedule I to that Act.”

ELECTION ACT

39. Sections 564.3 to 564.6 of the Election Act (chapter E-3.3) are repealed.

40. The Act is amended by inserting the following section after section 569:

“569.1. The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this Title and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences under this Title that are listed in Schedule I to that Act.”

CHAPTER VII

TRANSITIONAL PROVISIONS

41. The expenditure and investment estimates for the Public Contracts Fund, set out in Schedule I, are approved for the 2014-2015 fiscal year.

42. Out of the amounts credited to the general fund, the Minister may transfer to the Public Contracts Fund the required appropriations allocated by Parliament for Program 2, “Administration of Justice”, of the “Justice” portfolio in the Expenditure Budget for the 2014-2015 fiscal year.

43. Expenditures and investments made after 31 March 2014 by the Minister out of the appropriations allocated by Parliament and corresponding, on the date they were made, to the type of expenditures and costs that may be debited from the Public Contracts Fund are debited from the Fund.

44. A proceeding, pending before a civil court on 1 April 2015, to repair injury caused to a public body by fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract may, on a party’s application, be stayed.

The application to stay the proceeding is made to a judge in chambers, who grants the stay if the enterprise or natural person mentioned in section 10 undertakes to participate in the reimbursement program described in Chapter II or if the public body states that it intends to continue the matter under the rules set out in Chapter III when they come into force.

45. From 1 April 2015 to the end date of the program described in Chapter II, a public body must obtain the Minister's authorization to institute an action to repair injury caused to it by fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract. The Minister grants the authorization if of the opinion that it does not hinder the achievement of the objectives of the reimbursement program.

46. From 1 April 2015 to the end date of the program described in Chapter II, a public body may not, without the Minister's authorization, transact on an amount improperly paid as a result of fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract. In the absence of an authorization from the Minister, such a transaction is null.

47. Persons and partnerships who are contractors within the meaning of section 1 of the Act respecting contracting by public bodies (chapter C-65.1) and are entered in the register kept by the Chief Electoral Officer with respect to persons and partnerships referred to in the first and second paragraphs of section 641.2 of the Act respecting elections and referendums in municipalities (chapter E-2.2), of section 221.1.2 of the Act respecting school elections (chapter E-2.3) or of section 564.3 of the Election Act (chapter E-3.3) are, despite any provision to the contrary and for the remaining period of ineligibility applicable under those Acts, named in the register of enterprises ineligible for public contracts established under section 21.6 of the Act respecting contracting by public bodies.

For the purposes of the first paragraph, the Chair of the Conseil du trésor enters in the register of enterprises ineligible for public contracts for each person and partnership concerned the relevant information from among that required under the first paragraph of section 641.4 of the Act respecting elections and referendums in municipalities, of section 221.1.4 of the Act respecting school elections or of section 564.5 of the Election Act, as applicable.

CHAPTER VIII

FINAL PROVISIONS

48. The Minister of Justice is responsible for the administration of this Act, except Chapter VI.

49. This Act comes into force on 1 April 2015, except Chapter III, which comes into force on the date to be set by the Government.

This Act, except Chapters V and VI, ceases to have effect on (*insert the date that is five years after the date of coming into force of Chapter III*), except with regard to any action brought prior to that date. Chapter V ceases to have effect on the date to be set by the Government.

SCHEDULE I
(Section 41)

PUBLIC CONTRACTS FUND

2014-2015 EXPENDITURE AND INVESTMENT ESTIMATES
(in thousands of dollars)

Revenues

Expenditures

72.4

Surplus or deficit for the fiscal year

(72.4)

Balance of loans or advances

(72.4)