



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 55

(2015, chapter 23)

An Act respecting transparency measures in the mining, oil and gas industries

**Introduced 11 June 2015
Passed in principle 17 September 2015
Passed 21 October 2015
Assented to 21 October 2015**

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EXPLANATORY NOTES

The purpose of this Act is to impose transparency measures in the mining, oil and gas industries making it mandatory for mining, oil and gas enterprises to declare the monetary payments or payments in kind that they make in the course of their natural resource exploration and development projects. These measures are aimed at discouraging and detecting corruption, as well as fostering the social acceptability of such projects.

The Act provides that every entity that engages in exploration for or development of mineral substances or hydrocarbons is subject to this Act if

(1) it is listed on a stock exchange in Canada and has its head office in Québec; or

(2) it has an establishment in Québec, exercises activities or has assets in Québec and, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent fiscal years:

(a) it has at least \$20 million in assets;

(b) it has generated at least \$40 million in revenue;

(c) it employs an average of at least 250 employees.

Such entities will be required to file a statement declaring all payments made to the same payee in a fiscal year, if those payments total \$100,000 or more.

The Act defines a payee as a government, a body established by two or more governments, a municipality or a Native community, and certain entities that exercise powers or duties of government for such payees.

The Act covers any monetary payment or payment in kind in relation to exploration for or development of mineral substances or hydrocarbons that is made to a payee in the form of, among other things, taxes and income tax, royalties, rental fees, regulatory charges, production entitlements and contributions for infrastructure construction or improvement.

The statement must be made public for five years.

A statement filed in accordance with the requirements of a competent authority other than Québec may be substituted for the statement required under Québec law if the Government has determined by regulation that the requirements of that authority are an acceptable substitute and if the entity subject to this Act sent a copy of the statement.

The Act grants the Autorité des marchés financiers the powers necessary to administer it, in addition to powers of investigation, and sets out monetary administrative sanctions and penal provisions.

The Minister may enter into an agreement with another competent authority or one of its bodies that is responsible for implementing similar requirements, including regarding information sharing.

The Authority must report every year to the Minister on its activities with regard to the administration of this Act. The Minister then tables the report in the National Assembly.

Lastly, transitional provisions are introduced to defer the application of the Act for payments made for the benefit of a Native community. Likewise, an entity subject to this Act will not be required to file a statement for its fiscal year in progress on the date of coming into force of the Act.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting the Autorité des marchés financiers (chapter A-33.2);
- Act respecting administrative justice (chapter J-3);
- Mining Act (chapter M-13.1).

Bill 55

AN ACT RESPECTING TRANSPARENCY MEASURES IN THE MINING, OIL AND GAS INDUSTRIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

DIVISION I

PURPOSE

- 1.** The purpose of this Act is to impose transparency measures with regard to monetary payments or payments in kind made by mining, oil and gas enterprises, with a view to discouraging and detecting corruption, as well as fostering the social acceptability of natural resource exploration and development projects.
- 2.** This Act is binding on the Government, on government departments and on bodies that are mandataries of the State.

DIVISION II

DEFINITIONS

- 3.** For the purposes of this Act,

“**payee**” means

- (1) a government;
- (2) a body established by two or more governments;
- (3) a municipality or the Kativik Regional Government;
- (4) a Native nation represented by all the band councils, or councils in the case of northern villages, of the communities forming the Native nation, the Makivik Corporation, the Cree Nation Government, a Native community represented by its band council, a group of communities so represented or, in the absence of such councils, any other Native group;

(5) any board, commission, trust or corporation or other body that exercises, or is established to exercise, powers or duties of government for a payee referred to in paragraphs 1 to 4; or

(6) any other payee the Government designates by regulation;

“**payment**” means a monetary payment or a payment in kind that is made to a payee in relation to exploration for or development of mineral substances or hydrocarbons and that falls within any of the following categories:

(1) taxes and income tax, other than consumption taxes and personal income taxes;

(2) royalties;

(3) fees, including rental fees, entry fees, regulatory charges and any other consideration for licences, permits or concessions;

(4) production entitlements;

(5) dividends other than those paid as an ordinary shareholder of a person subject to this Act;

(6) bonuses, including signature, discovery and production bonuses;

(7) contributions for infrastructure construction or improvement; or

(8) any other payment the Government determines by regulation.

DIVISION III

SCOPE

4. Every legal person, corporation, trust or other organization that engages in exploration for or development of mineral substances or hydrocarbons, that holds a permit, right, licence, lease or other authorization for either of those activities or controls such a legal person, corporation, trust or organization and that meets one of the following requirements is an entity that is subject to this Act if

(1) it is listed on a stock exchange in Canada and has its head office in Québec; or

(2) it has an establishment in Québec, exercises activities or has assets in Québec and, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent fiscal years:

(a) it has at least \$20 million in assets;

- (b) it has generated at least \$40 million in revenue;
- (c) it employs an average of at least 250 employees.

For the purposes of the first paragraph, the Government may determine, by regulation, any other activity relating to mineral substances or hydrocarbons or any other requirement.

5. Subject to what the Government may determine by regulation, a legal person, corporation, trust or organization controls another legal person, corporation, trust or organization if it controls it, directly or indirectly, in any manner.

A legal person, corporation, trust or organization that controls another legal person, corporation, trust or organization is deemed to control any other organization that the other legal person, corporation, trust or organization controls or is deemed to control.

CHAPTER II

ANNUAL STATEMENT

6. Entities subject to this Act must, not later than the 150th day following the end of their fiscal year, provide the Autorité des marchés financiers (Authority) with a statement declaring all payments within a category of payment listed in the definition of “payment” in section 3 that are made to the same payee in that fiscal year, if the total value of those payments is equal to or greater than \$100,000.

The statement must be accompanied by a certificate made by one of the entity’s directors or officers, or by an independent auditor, attesting that the information in the statement is true, accurate and complete.

The Government determines, by regulation, the form of the statement, including the manner in which the payments must be presented or broken down, for instance by project, and the procedure for sending the statement.

7. For the purposes of the first paragraph of section 6,

(1) a payment that is made to an employee or public office holder of a payee is deemed to have been made to the payee;

(2) a payment that is due to a payee and is received on the payee’s behalf by a body that is not itself a payee is deemed to have been made to the payee to whom the payment is due;

(3) a payment made by a legal person, corporation, trust or organization that is not subject to this Act but is controlled by an entity that is subject to it is deemed to have been made by that entity;

(4) a payment made by any intermediary on behalf of an entity that is subject to this Act, or on behalf of a legal person, corporation, trust or organization that engages in exploration for or development of mineral substances or hydrocarbons or holds a permit, right, licence, lease or other authorization to engage in either of those activities, is deemed to have been made by that entity or by that legal person, corporation, trust or organization;

(5) a payment made to a payee referred to in paragraph 5 of the definition of “payee” in section 3 is deemed to have been made to the payee for whom that payee exercises, or is established to exercise, powers or duties of government; and

(6) the value of a payment in kind is the cost to the entity subject to this Act of the property or services it provided or, if the cost cannot be determined, the fair market value of the property or services.

8. On sending a statement, entities subject to this Act must make the statement public, in the manner the Government determines, for five years.

9. A statement filed in accordance with the requirements of another competent authority may be substituted for the statement required under the first paragraph of section 6 if the Government has determined by regulation that the requirements of that authority are an acceptable substitute because they achieve the same purposes as those of this Act. The Government determines by regulation the conditions under which such a substitution can be made.

10. If a wholly-owned subsidiary of an entity subject to this Act is also subject to this Act, the subsidiary is deemed to have filed the statement required under the first paragraph of section 6 for the fiscal year if

(1) the entity has sent a statement to the Authority in accordance with section 6 and the statement includes the payments made by the subsidiary in the subsidiary’s fiscal year or any part of that fiscal year;

(2) the subsidiary has notified the Authority in writing, before the 150th day following the end of its fiscal year, that the entity has filed the statement; and

(3) the subsidiary has complied with sections 6, 7 and 8 for any part of its fiscal year that is not covered by the entity’s statement, if applicable.

11. Entities subject to this Act must keep records of all payments they made in a fiscal year for seven years following the date they sent the statement in accordance with this chapter.

CHAPTER III

OVERSIGHT

12. In addition to exercising its powers of investigation under Chapter III of Title I of the Act respecting the Autorité des marchés financiers (chapter A-33.2), the Authority may require an entity subject to this Act to provide, within the time specified by the Authority, any document or information considered useful for the purposes of this Act, including

(1) a list of the mining, oil or gas exploration or development projects in which the entity has an interest and the nature of that interest;

(2) an explanation of how a payment was calculated for the purpose of preparing the statement referred to in section 6; and

(3) a statement of any policies that the entity has implemented for the purpose of meeting its obligations under this Act.

13. The Authority may require that the statement of an entity subject to this Act, or the documents or information provided to the Authority under section 12, be audited by an independent auditor.

The entity must, within the time specified by the Authority, provide the Authority with the results of any such audit.

The Government may, by regulation, determine the requirements to be met by an independent auditor conducting such an audit, as well as the generally accepted auditing standards that apply to such an audit.

14. The Minister or the Authority may order an entity subject to this Act to take, within a specified time, the measures required to comply with this Act.

CHAPTER IV

AGREEMENT AND INFORMATION SHARING

15. The Minister may enter into an agreement with the government of another competent authority or one of its bodies concerning the implementation of this Act or concerning the requirements pertaining to the statements required by that authority or body.

Such an agreement must provide, among other things, for the sharing, between the Minister or the Authority and that government or body, of the information needed for the purposes of the requirements referred to in the first paragraph.

CHAPTER V

AUTHORITY'S REPORT

16. Not later than 31 July of each year, the Authority must report to the Minister, for the preceding year, on its activities with regard to the administration of this Act.

The report must contain all the information required by the Minister.

17. The Minister tables the report obtained under section 16 in the National Assembly within 30 days of receiving it or, if the Assembly is not sitting, within 30 days of resumption.

CHAPTER VI

REGULATIONS

18. The Government may, by regulation, determine

(1) the cases in which this Act does not apply to entities subject to it or to payees or payments;

(2) the applicable rate of exchange for the conversion of payments into Canadian dollars;

(3) the fees payable for completing any formality conducive to the application of this Act; and

(4) the provisions of a regulation whose contravention constitutes an offence.

19. Any regulation made under this Act is on the recommendation of the Minister and the Minister of Finance.

CHAPTER VII

MONETARY ADMINISTRATIVE PENALTIES

20. Persons within the Authority who are designated by the Minister may impose monetary administrative penalties on any entity subject to this Act that fails to comply with this Act or the regulations, in the cases and under the conditions set out in them.

For the purposes of the first paragraph, the Minister develops and makes public a general framework for applying such administrative penalties in connection with penal proceedings, specifying the following elements:

(1) the purpose of the penalties, such as urging the entities subject to this Act to take rapid measures to remedy the failure and deter its repetition;

(2) the categories of functions held by the persons designated to impose penalties;

(3) the criteria that must guide designated persons when a failure to comply has occurred, such as the type of failure, its repetitive nature, the seriousness of the effects or potential effects, and the measures taken by the entity subject to this Act to remedy the failure;

(4) the circumstances in which a penal proceeding is deemed to have priority; and

(5) the other procedures connected with such a penalty, such as the fact that it must be preceded by notification of a notice of non-compliance.

The general framework must give the categories of administrative or penal sanctions as defined by the Act or the regulations.

21. No decision to impose a monetary administrative penalty may be notified to an entity subject to this Act for a failure to comply with this Act or the regulations if a statement of offence has already been served for a failure to comply with the same provision on the same day, based on the same facts.

22. In the event of a failure to comply with this Act or the regulations, a notice of non-compliance may be notified to the entity concerned urging that the necessary measures be taken immediately to remedy the failure. Such a notice must mention that the failure may give rise to a monetary administrative penalty and penal proceedings.

23. When a person designated by the Minister imposes a monetary administrative penalty on an entity subject to this Act, the designated person must notify the decision by a notice of claim that complies with section 33.

No accumulation of monetary administrative penalties may be imposed on the same entity subject to this Act for failure to comply with the same provision if the failure occurs on the same day and is based on the same facts. In cases where more than one penalty would be applicable, the person imposing the penalty decides which one is most appropriate in light of the circumstances and the purpose of the penalties.

24. The entity subject to this Act may apply in writing for a review of the decision within 30 days after notification of the notice of claim.

25. The Minister designates persons within the Authority to be responsible for reviewing decisions on monetary administrative penalties. They must not come under the same administrative authority as the persons who impose such penalties.

26. After giving the entity subject to this Act an opportunity to submit observations and produce any documents to complete the record, the person

responsible for reviewing the decision renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner. That person may confirm, quash or vary the decision under review.

27. The application for review must be dealt with promptly. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state that the applicant has the right to contest the decision before the Administrative Tribunal of Québec within the time prescribed for that purpose.

If the review decision is not rendered within 30 days after receipt of the application or, as applicable, after the expiry of the time required by the entity subject to this Act to submit observations or produce documents, the interest provided for in the fourth paragraph of section 33 on the amount owed ceases to accrue until the decision is rendered.

28. The imposition of a monetary administrative penalty for failure to comply with the Act or the regulations is prescribed two years after the date of the failure to comply.

However, if false representations have been made to the Minister or the Authority, the monetary administrative penalty may be imposed within two years after the date on which the investigation that led to the discovery of the failure to comply was begun.

In the absence of evidence to the contrary, the certificate of the Minister or the Authority constitutes conclusive proof of the date on which the investigation was begun.

29. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

30. A monetary administrative penalty of \$1,000 may be imposed on any entity subject to this Act that, in contravention of this Act, refuses or neglects to provide information, studies, research findings, expert evaluations, reports, plans or other documents, or fails to file them in the prescribed time, in cases where no other monetary administrative penalties are provided for by this Act or the regulations.

31. A monetary administrative penalty of \$10,000 may be imposed on any entity subject to this Act that refuses or neglects to comply with an order imposed under this Act, or in any manner hinders or prevents the enforcement of such an order.

32. The Government may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty. The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may

vary according to the degree to which the standards have been infringed, without exceeding the maximum amount set out in section 31.

33. The person designated by the Minister under section 23 may, by notification of a notice of claim, claim from an entity subject to this Act the payment of the amount of any monetary administrative penalty imposed under this chapter.

In addition to stating the entity's right to obtain a review of the decision under section 24 and the time limit specified in that section, the notice of claim must include

- (1) the amount of the claim;
- (2) the reasons for it;
- (3) the time from which it bears interest; and
- (4) the right to contest the claim or, if applicable, the review decision before the Administrative Tribunal of Québec and the time limit for doing so.

The notice must also include information on the procedure for recovery of the amount claimed, in particular with regard to the issue of a recovery certificate under section 36 and its effects. The entity concerned must also be advised that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

Notification of a notice of claim interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

34. A notice of claim or, as applicable, a review decision that confirms the imposition of a monetary administrative penalty may be contested before the Administrative Tribunal of Québec by the entity concerned, within 60 days after notification of the notice or review decision.

When rendering its decision, the Administrative Tribunal of Québec may make a ruling with respect to interest accrued on the penalty while the matter was pending.

35. The directors and officers of an entity subject to this Act that has defaulted on payment of an amount owed under this chapter are solidarily liable, with the entity, for the payment of the amount, unless they establish that they exercised due care and diligence to prevent the failure which led to the claim.

36. If the amount owing is not paid in its entirety, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision, on the expiry of the time for contesting the review decision before the Administrative Tribunal of Québec or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the Authority's decision or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor's name and address and the amount of the debt.

37. Once a recovery certificate has been issued, the Minister of Revenue applies, in accordance with section 31 of the Tax Administration Act, a refund due to a person under a fiscal law to the payment of an amount owed by that person under this Act.

Such application interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owed.

38. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

39. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation.

40. The amounts received by the Authority under this chapter belong to it and, despite section 38.2 of the Act respecting the Autorité des marchés financiers, are not paid into the Education and Good Governance Fund.

CHAPTER VIII

PENAL PROVISIONS

41. Whoever

(1) fails to comply with sections 6, 8, 11, 12 and 14,

(2) makes a false or misleading statement or provides false or misleading information to the Minister or the Authority,

(3) wilfully and in any manner evades or attempts to evade the application of this Act,

(4) hinders the action of a person who exercises powers or duties for the purposes of this Act, or

(5) contravenes a provision of a regulation whose contravention constitutes an offence,

commits an offence and is liable to a fine of \$250,000.

42. If an offence under section 41 continues for more than one day, it constitutes a separate offence for each day it continues.

43. Penal proceedings for an offence under this Act are prescribed five years after the date the offence was committed.

44. The Authority may institute penal proceedings with regard to offences under this Act. In such a case, the fine imposed by the court is remitted to the Authority and, despite section 38.2 of the Act respecting the Autorité des marchés financiers, is not paid into the Education and Good Governance Fund.

45. The Authority may recover its investigation costs from any person found guilty of an offence under this Act.

The Authority prepares a statement of costs and presents it to a judge of the Court of Québec so that the costs may be taxed, after giving the interested parties five days' prior notice of the date of presentation.

CHAPTER IX

AMENDING PROVISIONS

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

46. Section 9 of the Act respecting the Autorité des marchés financiers (chapter A-33.2) is amended by inserting “and the Act respecting transparency measures in the mining, oil and gas industries (2015, chapter 23),” after “(chapter C-65.1)” in the first paragraph.

ACT RESPECTING ADMINISTRATIVE JUSTICE

47. Schedule IV to the Act respecting administrative justice (chapter J-3) is amended by adding the following paragraph at the end:

“(32) section 34 of the Act respecting transparency measures in the mining, oil and gas industries (2015, chapter 23).”

MINING ACT

48. Section 120 of the Mining Act (chapter M-13.1) is replaced by the following section:

“120. Every lessee and grantee shall prepare a report showing, for each mine, the quantity of ore extracted during the previous year, its value, the duties paid under the Mining Tax Act (chapter I-0.4) during that period, the overall contributions paid by the lessee and grantee and any other information determined by regulation and send it either

(1) to the Minister, not later than the 150th day following the end of their fiscal year or, in the case of a natural person, of the calendar year; or

(2) to the Authority at the same time as the statement required under the Act respecting transparency measures in the mining, oil and gas industries (2015, chapter 23).

The Authority shall, without delay, send the Minister the report received under subparagraph 2 of the first paragraph.”

49. Section 155 of the Act is amended by replacing “and the quantity of those” in the first paragraph by “, its value, and the quantity of mineral substances”.

50. Section 215 of the Act is amended

(1) by replacing “mining lease, mining concession and” in the introductory clause of the third paragraph by “mine and for each”;

(2) by striking out the fifth paragraph.

CHAPTER X

TRANSITIONAL AND FINAL PROVISIONS

51. The Minister must, not later than 21 October 2020 and subsequently every five years, report to the Government on the implementation of this Act and the advisability of amending it.

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

52. Entities subject to this Act are not required to report a payment that is made to any of the following payees before 1 June 2017:

(1) the Kativik Regional Government;

(2) a Native nation represented by all the band councils, or councils in the case of northern villages, of the communities forming the Native nation, the Makivik Corporation, the Cree Nation Government, a Native community represented by its band council, a group of communities so represented or, in the absence of such councils, any other Native group;

(3) a body established by at least two Native groups referred to in paragraph 2; and

(4) any board, commission, trust or corporation or other body that exercises, or is established to exercise, powers or duties of government for any body referred to in any of paragraphs 1 to 3.

53. Entities subject to this Act are not required to file the statement required under section 6 for the fiscal year in progress on 21 October 2015.

54. The Government designates the Minister responsible for the application of this Act.

55. This Act comes into force on 21 October 2015.