



NATIONAL ASSEMBLY

FIRST SESSION

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Bill 185

**An Act to amend the Act respecting
labour relations, vocational training
and manpower management in the
construction industry**

Introduction

**Introduced by
Mr Normand Cherry
Minister of Labour**

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EXPLANATORY NOTES

This bill proposes certain amendments to the Act respecting labour relations, vocational training and manpower management in the construction industry.

It clarifies, in particular, the notion of independent contractor and the provisions concerning the representative of a corporation or partnership who works on construction sites and also specifies certain powers of the Commission de la construction du Québec.

The bill increases certain fines and creates new offences. Thus, in the event of a subsequent offence, certain offences will entail, in addition to a fine, the suspension of the competency certificate or the suspension of the right to obtain or renew a competency certificate. Furthermore, any person who hires the services of an employee whose competency certificate or whose right to obtain one has been suspended becomes liable to heavy fines.

Under the bill, joint and several liability is extended to every building contractor and subcontractor as regards the payment of their employees' wages. It is also provided that every prime contractor who makes an agreement with a contractor who does not hold the licence required to perform construction work will be liable for the payment of the wages fixed by the Construction Decree.

Finally, this bill removes the obligation to publish in newspapers a collective agreement signed by the parties and a petition for the juridical extension of such an agreement, and a new provision enables the Government to determine the cases in which a provision of the Act may require the payment of costs, dues or fees.

Bill 185

An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 1 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) is amended

(1) by replacing the words “Association de la construction de Montréal et du Québec, the Fédération de la construction du Québec” in the second, third and fourth lines of paragraph c.1 by the words “Association de la construction du Québec”;

(2) by replacing that part of paragraph k.1 which precedes subparagraph i. by the following:

“(k.1) “independent contractor”: a natural person holding a specialized contractor’s licence issued under the Act respecting building contractors vocational qualifications (R.S.Q., chapter Q-1) who personally carries out for others and without the assistance of an employee or, as the case may be, a corporation or partnership holding such a licence one of the directors, shareholders holding one or more voting shares or partners of which personally carries out for the benefit of the corporation or partnership,”.

2. Section 3 of the said Act is replaced by the following section:

“3. The Commission is a corporation within the meaning of the Civil Code.

In addition to the powers conferred on it by this Act, the Commission may

(1) acquire, hold, improve, lease and alienate by onerous title any property;

(2) borrow money;

(3) notwithstanding the provisions of the Civil Code, hypothecate, mortgage or pledge, while retaining possession thereof, cede or transfer its property to secure the payment of the bonds or securities issued, give a part only of such guarantees for the same objects, and constitute any hypothec, mortgage or pledge by trust deed in accordance with the Special Corporate Powers Act (R.S.Q., chapter P-16);

(4) accept any gift, legacy or other liberality by entirely gratuitous and unconditional title.”

3. Section 4 of the said Act is amended by adding, at the end, the following paragraph:

“(9) administer any fund the parties consider necessary for training purposes.”

4. Section 18.4 of the said Act is amended by inserting the words “shall designate two members” after the word “association” in the first line of the second paragraph.

5. Section 19 of the said Act, amended by section 122 of chapter 85 of the statutes of 1990, is again amended by striking out the second paragraph.

6. The said Act is amended by inserting, after section 19, the following sections:

“19.1 For each corporation or partnership, only one director or a shareholder holding one or more voting shares in the corporation or only one member of the partnership may personally carry out construction work, as a representative of the corporation or partnership. He must then be designated in that capacity with the Commission.

Every person other than the designated representative who personally carries out construction work for the benefit of the corporation or partnership is deemed to be an employee thereof for the purposes of this Act and the regulations.

The representative shall be designated on such conditions and in such manner as the Commission may determine by regulation.

The designated representative is deemed to be an employer for the purposes of sections 85.5 and 85.6.

“19.2 No employer or representative designated under section 19.1 may carry out construction work without the assistance of one or more employees of the undertaking, unless he is an independent contractor or the designated representative of an independent contractor.

“19.3 No person may carry out construction work unless he is an employer, an employee, an independent contractor or a representative designated under section 19.1.”

7. Section 48 of the said Act is amended by striking out the words “, in a newspaper published in the English language and in a newspaper published in the French language,” in the second, third and fourth lines of the first paragraph.

8. Section 54 of the said Act is amended by replacing the words “professional employer” in the first line by the words “building contractor”.

9. The said Act is amended by inserting, after section 54, the following section:

“54.1 Every prime contractor who makes an agreement, directly or through an intermediary, with a contractor who does not hold the licence required under the Act respecting building contractors vocational qualifications shall be severally liable with such contractor and any intermediary or sub-contractor thereof, for the payment of the wages fixed by the decree.”

10. Section 61 of the said Act is amended by inserting the words “measures relating to manpower,” after the word “seniority,” in the first line of the third paragraph.

11. Section 82 of the said Act is amended

(1) by adding the words “the employer personally, the representative designated under section 19.1 and” after the word “by” in the seventh line of subparagraph *b* of the first paragraph;

(2) by adding, after subparagraph *g* of the first paragraph, the following subparagraphs:

“(h) require security of every employer who carries out or causes construction work to be carried out, or of certain classes of employers

determined by it, to secure the payment of his employees' wages, determine the nature, amount and form of such security and the conditions for its use and its remittance by the Commission, which may vary according to the class of employers concerned, and determine, where applicable, the classes of employers that are exempt from furnishing such security;

"(i) oblige every employer and every corporation or partnership contemplated in section 19.1 to transmit to it, within the time and in the form it determines, a written notice setting out his or its identification, the name and address of each of his or its establishments, the surname, given name, address and competency of his or its representative designated under section 19.1, if applicable, and such other information as it considers useful for the purposes of this Act and the regulations."

12. The said Act is amended by inserting, after section 82, the following sections:

"82.1 Every employer is liable for the payment to the Commission of the compulsory levy and assessment to be withheld from an employee's wages, even if he fails to withhold such levy or assessment.

"82.2 All sums levied under subparagraph c of section 82 and the amount of the contributions or assessments collected under subparagraph f of section 82 shall bear interest, from the date on which they are exigible, at a rate fixed by regulation under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

For the purpose of computing interest, any portion of a month is considered a full month.

The interest is not capitalized."

13. Section 83 of the said Act, amended by section 779 of chapter 4 of the statutes of 1990, is again amended by replacing the words "the fines provided for in section 120" in the second line by the words "a fine of \$400 in the case of an individual and \$1 600 in the case of any other person".

14. Section 83.1 of the said Act, amended by section 779 of chapter 4 of the statutes of 1990 and section 119 of chapter 33 of the statutes of 1991, is again amended by replacing the amounts "\$150" and "\$650" in the fifth line by the amounts "\$400" and "\$1 600", respectively.

15. Section 83.2 of the said Act, amended by section 779 of chapter 4 of the statutes of 1990 and section 120 of chapter 33 of the statutes of 1991, is again amended by replacing the amounts "\$150" and "\$650" in the fourth and fifth lines by the amounts "\$400" and "\$1 600", respectively.

16. The said Act is amended by inserting, after section 92, the following section:

"92.1 The Commission may retain, out of the sums collected by it for the purposes mentioned in paragraph 9 of section 4, the amounts necessary to pay the administration costs and other expenses arising out of activities connected with the said purposes."

17. Section 119.1 of the said Act, amended by section 784 of chapter 4 of the statutes of 1990, is again amended

(1) by replacing the words "the fines provided in section 120" in the second line of that part which precedes paragraph 1 by the words "a fine of \$400 in the case of an individual and \$1 600 in the case of any other person";

(2) by replacing the words "every employee or employer" in the first line of both paragraphs 1 and 2 by the words "every person";

(3) by replacing the words "every employee or employer who personally performs construction work and who" in the first and second lines of paragraph 7 by the words "every person who personally performs construction work and";

(4) by inserting the words ", falsifies a document or uses a falsified document" after the word "declaration" in the first line of paragraph 10;

(5) by adding, at the end, the following paragraphs:

"(11) every person who performs construction work contrary to section 19.2;

"(12) every person who, contrary to section 19.3, performs construction work otherwise than as an employer, employee, independent contractor or designated representative;

"(13) every person who contravenes a regulation made under subparagraph *h* of the first paragraph of section 82."

18. The said Act is amended by inserting, after section 119.1, the following sections:

"119.2 Where a person is convicted of an offence under section 83.1 or under any of paragraphs 1, 2 and 7 to 12 of section 119.1 after having been convicted, within the two years preceding the conviction, of an offence under any of those provisions, his competency certificate or his right to obtain such a certificate or the renewal of such a certificate shall be suspended for a period of one to three months, in addition to the penalty provided for the offence.

The period of suspension imposed under the first paragraph is of three to six months if the person's competency certificate or his right to obtain such a certificate or the renewal of such a certificate has been suspended within the two years preceding the second conviction.

"119.3 Every person who performs construction work while his competency certificate or his right to obtain such a certificate or the renewal of such a certificate is suspended is guilty of an offence and is liable to a fine of \$1 600 and his competency certificate or his right to obtain such a certificate or the renewal of such a certificate is suspended for an additional period of six to twelve months.

"119.4 Every person who hires the services of or assigns to construction work an employee while the employee's competency certificate or his right to obtain such a certificate or the renewal of such a certificate is suspended is guilty of an offence and is liable to a fine of \$1 600 in the case of an individual and \$4 000 in the case of any other person.

"119.5 In the cases referred to in any of sections 119.2 and 119.3, the judge imposing the sentence shall determine the duration of the suspension and order, where applicable, that the competency certificate be confiscated and returned to the Commission. He may, in no case, suspend the passing of that part of the sentencing."

19. Section 122 of the said Act, amended by section 787 of chapter 4 of the statutes of 1990 and section 129 of chapter 33 of the statutes of 1991, is again amended

(1) by replacing the second sentence of the first paragraph of subsection 1 by the following sentence: "In the case of an omission or a false entry in the compulsory register, the registration system or the pay-list, of a secret rebate, of an omission to keep the compulsory register or the pay-list or to transmit the compulsory monthly report to the Commission, prescription shall run against the Commission's recourse only from the date the Commission becomes aware of the facts giving rise to the civil action.";

(2) by replacing the amounts "\$75" and "\$150" in the fourth line of paragraph *c* of subsection 2 by the amounts "\$400" and "\$1 600", respectively;

(3) by replacing the amounts "\$150" and "\$400" in the sixth line of paragraph *c* of subsection 2 by the amounts "\$800" and "\$3 200", respectively;

(4) by replacing the amount "\$1 125" in paragraph *a* of subsection 4 by the amount "\$1 600";

(5) by replacing the amount "\$2 250" in the first line of paragraph *b* of subsection 4 by the amount "\$3 200";

(6) by replacing the figure "120" at the end of subsection 5 by the figure "119.1";

(7) by replacing the first paragraph of subsection 8 by the following paragraph:

"(8) In the cases referred to in subsection 7, the Commission may exercise the recourses of the employees on the same conditions as those mentioned in subparagraphs *a* and *b* of the first paragraph of section 81.";

(8) by replacing the words "such reimbursement" in the second line of the second paragraph of subsection 8 by the words "the net amount collected under the first paragraph".

20. Section 123 of the said Act is amended by inserting, after subsection 8, the following subsection:

"(8.1) determine, subject to the sixth paragraph of section 109.2, subsection 7 of this section and subsections 11 and 12 of section 123.1, in what cases and from whom costs, dues or fees may be exigible and fix the amount thereof;".

21. The said Act is amended by inserting, after section 123.3, the following chapter:

"CHAPTER XIII.1

"COMMUNICATION OF INFORMATION

"123.4 For the purposes of this Act and the regulations, the Commission may obtain from the Minister of Manpower and Income Security, the Minister of Labour and the Régie des entreprises de construction du Québec, any information and document in their

possession relating to the performance of construction work and the persons who perform or cause such work to be performed, which shall be provided to the Commission in accordance with the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1).

“123.5 No person may be prosecuted by reason of any information or document furnished by him in good faith to the Commission under this chapter.”

TRANSITIONAL AND FINAL PROVISIONS

22. Until 1 July 1992, paragraph 2 of section 1 and section 5 of this Act and section 19.3 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20), introduced by section 6 of this Act, do not apply to a corporation or partnership which, on *(insert here the date of introduction of this Act)*, held a specialized contractor's licence issued under the Act respecting building contractors vocational qualifications (R.S.Q., chapter Q-1) and for the benefit of which any director, shareholder holding one or more shares or partner thereof personally carried out construction work within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry, before *(insert here the date of introduction of this Act)*.

23. The Commission de la construction du Québec shall issue a new competency certificate to replace a competency certificate issued by the Commission to a person contemplated in section 22 who elects to perform construction work as an employee within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry.

The new competency certificate shall be issued to the person, provided he files an application therefor with the Commission before 1 July 1992 and meets the following conditions:

(1) he returns the valid competency certificate that was issued to him by the Commission under the Regulation respecting the issuance of competency certificates made by Order in Council 673-87 of 29 April 1987 and any present and future amendment thereto;

(2) he informs the Commission, in accordance with the procedure established by the latter under section 39 of the Act respecting labour relations, vocational training and manpower management in the construction industry, of his membership in a representative association within the meaning of the said Act.

The new competency certificate expires on 1 March 1993. It shall correspond to the journeyman competency certificate, occupation competency certificate or apprentice competency certificate, as the case may be, that the person held, and the Commission shall indicate thereon that its holder is a person contemplated in section 22 of this Act. The certificate is deemed to have been issued under the Regulation respecting the issuance of competency certificates.

24. The Commission de la construction du Québec shall issue a competency certificate to any person contemplated in section 22 who elects to perform construction work as an employee within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry and who does not file an application for the issuance of a competency certificate under section 23.

The competency certificate shall be issued to the person, provided he files an application therefor with the Commission before 1 July 1992 and informs the Commission, in accordance with the procedure established by the latter under section 39 of the Act respecting labour relations, vocational training and manpower management in the construction industry, of his membership in a representative association within the meaning of the said Act.

In addition, the person must, within the same time period, meet one of the following conditions:

(1) if he is applying for the issuance of a journeyman competency certificate, prove that he holds a valid qualification certificate or attestation of experience issued under the Regulation respecting the vocational training and qualification of manpower in the construction industry (R.R.Q., 1981, chapter F-5, r.3) and furnish proof that he has successfully completed a safety course required by the Safety Code for the Construction Industry (R.R.Q., 1981, chapter S-2.1, r.6);

(2) if he is applying for the issuance of an occupation competency certificate, prove that he is 16 years of age or over and furnish proof that he has successfully completed the course on general knowledge of the industry approved by the Commission;

(3) if he is applying for the issuance of an apprentice competency certificate, prove that he is 16 years of age or over and furnish proof that he has successfully completed a safety course required by the Safety Code for the Construction Industry.

A competency certificate so issued expires on 1 March 1993. The Commission shall indicate thereon that its holder is a person

contemplated in section 22 of this Act. The certificate is deemed to have been issued under the Regulation respecting the issuance of competency certificates.

The journeyman competency certificate contemplated in subparagraph 1 of the third paragraph shall correspond to the trade, specialty or skills, if any, for which the qualification certificate or attestation of experience was issued.

25. Until the coming into force of a regulation made pursuant to section 19.1 of the Act respecting labour relations, vocational training and manpower management in the construction industry, a corporation or partnership may designate with the Commission de la construction du Québec only one representative for the purposes of section 19.1 of the said Act, in accordance with the following terms and conditions:

(1) it shall identify the applicant corporation or partnership and indicate its principal place of business in Québec;

(2) it shall indicate the surname, given name and residence of the sole representative and his quality before the corporation or partnership;

(3) it shall indicate the date on which the designation becomes effective.

The Commission must be notified of every designation made under the first paragraph before the date on which it becomes effective, if not, the designation shall take effect on the date of receipt of such notice.

A corporation or partnership may, in accordance with the terms and conditions set out in the first and second paragraphs, designate a new representative to replace the previously designated representative. The new designation replaces, from the date on which it becomes effective, the designation which was effective until then.

This section shall cease to have effect on the date of coming into force of the first regulation made pursuant to section 19.1 of the Act respecting labour relations, vocational training and manpower management in the construction industry.

26. The first regulation made by the Government, before 31 December 1991, to amend the Construction Decree, enacted by Order in Council 172-87 of 4 February 1987 and the amendments thereto, with the approval of both the employers' association and the

associations of employees whose representativeness is more than 50 %, within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry, and concerning the constitution of the fund and the terms and conditions for the implementation of a developmental training and retraining plan to promote the stabilization of income and employment for workers in the construction industry, may be made without prior publication of a draft regulation in the *Gazette officielle du Québec* and come into force on the date of its adoption and shall be published without delay in the *Gazette officielle du Québec*.

27. This Act comes into force on (*insert here the date of assent to this Act*).