



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 160

An Act to ensure that essential services are maintained in the health and social services sector

Introduction

Introduced by
Madam Thérèse Lavoie-Roux
Minister of Health and Social Services

**Québec Official Publisher
1986**

EXPLANATORY NOTE

The object of this bill is to ensure that essential services are maintained in health and social services establishments and in regional councils. For that purpose, it provides sanctions for any concerted action not in conformity with the Labour Code.

Bill 160

An Act to ensure that essential services are maintained in the health and social services sector

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

APPLICABILITY

1. This Act applies to the health and social services establishments and councils to which the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2) applies. It applies also to every association of employees certified to represent employees of an establishment or of a regional council and to the employees represented by it, and to every group of which such an association of employees is a member or to which it belongs, is affiliated or is bound by contract.

DIVISION II

CONTINUATION OF SERVICES

2. Every employee shall, from 12:01 a.m. on 12 November 1986, perform all the duties attached to his functions in accordance with the conditions of employment that are applicable to him, without stoppage, slowdown, reduction or alteration in his usual activities.

Every employee who has ceased to discharge his duties by reason of a strike shall, from the same time, return to work in accordance with his work schedule.

This section does not apply to an employee whose work stoppage is part of a strike declared in conformity with sections 111.11 and 111.12 of the Labour Code (R.S.Q., chapter C-27) if the agreement or the list approved by the Conseil des services essentiels is complied with or, in the case of a regional council, in conformity with section 111.0.23 if the agreement or the list and section 111.0.24 are complied with.

3. From 12:01 a.m. on 12 November 1986, every establishment or regional council shall take the appropriate measures to see that its usual services are provided.

4. No association of employees may declare or carry on a strike or organize any concerted action if such strike or concerted action involves a contravention of section 2 by the employees.

An association of employees may, however, declare a strike by proceeding as in sections 111.11 and 111.12 or, as the case may be, 111.0.23 and 111.0.24 of the Labour Code (R.S.Q., chapter C-27).

5. Every association of employees shall take the appropriate measures to induce the employees it represents to comply with section 2.

6. Every group of associations of employees shall take the appropriate measures to induce every association of employees that is a member of, belongs to, is affiliated to or is bound by contract to that group to comply with section 4.

7. No person may, by omission or otherwise, hinder employees in the normal performance of their duties under the conditions of employment applicable to them.

8. No person may hinder the access of a person to a place to which he has a right of access to perform his duties or to receive a service in an establishment or a regional council.

9. If, in an establishment or a regional council or in a category of establishments or regional councils determined by the Government, the employees do not comply with section 2 in sufficient number to ensure that the essential services, as provided in a list or in an agreement, or, if none, in sections 111.10 and 111.10.1 of the Labour Code, are maintained, the Government may, by order, from such time, for such time and on such conditions as it may fix,

(1) replace, amend or strike out any stipulation of the collective agreement binding the employer and the association of employees which

represents such employees relating to the mode by which the employer fills a position or hires new employees and any matter related to work organization;

(2) exclude the new employees hired to provide essential services from the application of the stipulations of the collective agreement relating to job security.

The provisions of an order made under the first paragraph shall, for the period indicated therein, form part of any collective agreement contemplated therein.

DIVISION III

SANCTIONS

§ 1.—*Penal proceedings*

10. Every person who contravenes or incites or encourages a person to contravene any provision of section 2, 3 or 7 is guilty of an offence and liable, in addition to costs, to a fine

(1) of \$25 to \$100 in the case of an employee or other natural person not contemplated in paragraph 2;

(2) of \$10 000 to \$50 000 in the case of a person who, on 11 November 1986, was an officer, employee or representative of an association of employees or of a group of associations of employees or an officer or representative of an establishment, of a regional council or of a group of establishments or regional councils, or who became so after that date;

(3) of \$20 000 to \$100 000 in the case of an association of employees or a group of associations of employees.

11. Every association of employees that fails to comply with section 4 or section 5 is guilty of an offence and liable, in addition to costs, to the fine prescribed in paragraph 3 of section 10 for each day or part of a day during which employees represented by it contravene section 2 while the association has failed to comply with section 5.

12. Every group of associations of employees that fails to comply with section 6 is guilty of an offence and liable, in addition to costs, to the fine prescribed in paragraph 3 of section 10 for each day or part of a day during which associations which are members of such group

or which belong, or are affiliated or bound by contract to it contravene section 4.

13. Every person who contravenes section 8 is guilty of an offence and liable, in addition to costs, to a fine of \$1 000 to \$10 000.

In the case of a person described in paragraph 2 of section 10, the fine prescribed in the first paragraph is \$10 000 to \$60 000.

14. Every person who, by act or omission, assists another in committing an offence is guilty of the offence as if he had committed it himself if he knew or should have known that his act or omission would probably result in aiding the commission of the offence.

15. Every person who abets, counsels or commands another to commit an offence is guilty of the offence and of any other offence committed by the other as a result of the abetment, counsel or command if he knew or should have known that his action would probably result in the commission of the offence.

16. Where an offence described in any of sections 10 to 15 continues for more than one day, a separate offence shall be counted for each day or part of a day during which the offence continues.

Notwithstanding subsection 2 of section 12 of the Summary Convictions Act (R.S.Q., chapter P-15), the offences may be set out in a single count.

17. Proceedings are brought in accordance with the Summary Convictions Act by the Attorney General, by a person generally or specially authorized by him in writing for that purpose or by a person contemplated in section 1.

§ 2.—Deductions

18. Every establishment or regional council shall cease to withhold from the salary of an employee any amount contemplated in section 47 of the Labour Code or any union assessment under a collective agreement, upon the declaration or carrying on of a strike in contravention of section 4 by the certified association of employees representing the employee.

Similarly, every establishment shall cease withholding any such amount from the salary of each of its employees represented by an association of employees from such time as the number of employees complying with section 2 is insufficient to provide essential service

as provided in an agreement or a list or, if none, essential services as provided in sections 111.10 and 111.10.1 of the Labour Code.

19. The cessation of withholdings under section 18 shall continue for twelve weeks for each day or part of a day during which the work stoppage continues or during which the establishment establishes that the number of employees, represented by the association of employees, who are complying with section 2 is insufficient to provide essential services as provided in a list or an agreement or, if none, essential services as provided in sections 111.10 and 111.10.1 of the Labour Code.

§ 3.—*Reduction of salary*

20. No employee who contravenes section 2 may be remunerated for his period of absence.

In addition, the salary to be paid to him under the collective agreement applicable for work done after the offence is reduced by an amount equal to the salary he would have received for each period of absence or cessation if he had complied with section 2.

Every employer who ascertains that an offence has been committed under section 2 shall make the deductions resulting from the application of the second paragraph, up to 20% of the salary for a pay period. He shall then pay the sums to a registered charity, within the meaning of the Taxation Act (R.S.Q., chapter I-3), designated by order of the Government.

21. Any disagreement as to the application of section 20 shall be referred for arbitration as if it were a grievance within the meaning of the applicable collective agreement.

22. No reimbursement of the amount contemplated in the second paragraph of section 20 may be ordered unless the employee complied with section 2 or unless he was prevented from complying therewith despite having taken every reasonable means to do so, and his failure to comply with section 2 was not part of any concerted action.

§ 4.—*Loss of seniority*

23. From the date determined by order of the Government, every employee who is absent from work or ceases to carry on his ordinary activities contrary to section 2 loses one year of seniority for each day or part of a day during which such absence or cessation continues.

If the number of years or of fractions of years of seniority acquired by an employee pursuant to the collective agreement governing him is smaller than the number of years resulting from the application of the first paragraph, the loss of seniority is equal to the number of years or fractions of years acquired.

The establishment shall inform the employee of his loss of seniority within forty-five days after his return to work.

An employee is entitled to recognition of the years or fractions of years of seniority he has lost by the effect of the application of this section if he complied with section 2 or he was prevented from complying therewith despite having taken every reasonable means to do so, and his failure to comply with section 2 was not part of any concerted action.

Every person to whom a decision taken by the employer pursuant to this section is referred for arbitration has authority only to confirm or quash it on the sole basis of the fourth paragraph.

§ 5.—*Civil liability*

24. An association of employees is liable for any damage caused during a contravention of section 2 by the employees it represents unless it proves that the damage is not a result of the contravention or that the contravention is not part of any concerted action.

Any person who sustains any damage by reason of an act performed in contravention of section 2 may apply to the competent court to obtain compensation.

Notwithstanding article 1003 of the Code of Civil Procedure (R.S.Q., chapter C-25), where a recipient within the meaning of the Act respecting health services and social services (R.S.Q., chapter S-5) institutes a class action under Book IX of the said Code by presenting a motion in accordance with the second paragraph of article 1002 of the said Code, the court shall authorize the institution of the class action if it is of opinion that the recipient to which it intends to ascribe the status of representative is in a position to adequately represent the members of the group described in the motion.

DIVISION IV

MISCELLANEOUS PROVISIONS

25. This Act does not have the effect of exempting an employee, an association of employees or a group of associations of employees, an establishment or a regional council from the application of the Labour Code.

26. The provisions of this Act prevail over any clauses of the collective agreement that are inconsistent therewith.

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