

THIRD SESSION

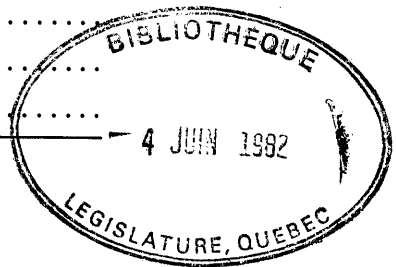
THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 72

**An Act to amend the Labour Code, the Code
of Civil Procedure and other legislation**

First reading
Second reading
Third reading



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QUÉBEC OFFICIAL PUBLISHER

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EXPLANATORY NOTES

The object of this bill is to affirm the fundamental right of the citizens to continue to have access to services considered essential when certain groups of employees resort to their right to strike in the health sector, the social services sector or in certain public services.

The bill amends Chapter V.1 of the Labour Code by setting up the Conseil des services essentiels consisting, in addition to a president, of two members appointed after consultation with labour, two members appointed after consultation with management and three other members representing the public.

Under the bill, essential services will have to be maintained at all times in establishments providing health services or social services. In the public service, the Government will itself order essential services maintained in the event of a strike where a strike in a service is likely to endanger the public health or public safety.

Where essential services have to be maintained, the parties concerned will be required to come to an agreement, with the assistance of the Conseil des services essentiels, if necessary. If there is no agreement, the union will be required to establish a list of the essential services it intends to maintain.

The council will assess whether or not the services provided for in an agreement or in a list are sufficient, and it will be empowered to suggest amendments to the parties. The council will also, with the help of experts, assess the services actually maintained during a strike.

Where the services provided for are considered insufficient or are unavailable, the council will make a report to the Minister, and inform the public of the situation.

The Government will have the power on the recommendation of the Minister to suspend the right to strike in an establishment or in a public service where essential services must be maintained if essential services are not sufficiently provided and where this endangers the public health or public safety. The suspension is to be

lifted only when the Government is satisfied that in the event of a strike, essential services will be adequately maintained.

This bill establishes that lock-outs are prohibited in establishments and public services that are bound to maintain essential services in the event of a strike.

Fines and penalties for illegal strikes or lock-outs are increased and new offences concerning impairment of the action of the council and contravention of an agreement or a list are created.

The bill amends the Code of Civil Procedure and the Act respecting the class action to facilitate access to that kind of proceeding and for that purpose, the bill provides new rules concerning judicial fees, and simplifies the rules of procedure governing class actions.

ACTS AMENDED BY THE BILL

- (1) the Labour Code (R.S.Q., chapter C-27);
- (2) the Code of Civil Procedure (R.S.Q., chapter C-25);
- (3) the Act respecting the class action (R.S.Q., chapter R-2.1).

Bill 72

An Act to amend the Labour Code,
the Code of Civil Procedure and other legislation

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

1. Section 1 of the Labour Code (R.S.Q., chapter C-27) is amended by striking out paragraph *m*.

2. Section 109.1 of the said Code is amended

(1) by replacing the expression “sections 111” wherever it appears in paragraphs *a*, *c* and *d* by the expression “sections 111.0.23”;

(2) by replacing paragraph *b* by the following paragraph:

“(b) utilizing, in an establishment where a strike has been declared in accordance with section 58 and, as the case may be, sections 111.0.23, 111.11 and 111.12, by a certified association or in an establishment where the employees are locked out, the services of an employee who is a member of the bargaining unit then on strike or locked out unless:

- i. an agreement has been reached for that purpose between the parties, but only to the extent that the agreement so provides;
- ii. a list has been submitted as stipulated in section 111.0.18 or 111.10 and to the extent that the list so provides;
- iii. an order is made by the Government pursuant to section 111.0.24 or 111.13;”.

3. Section 109.2 of the said Code is replaced by the following section:

“109.2 Where the certified association violates or the employees it represents violate an agreement, a list or an order con-

templated in subparagraph i, ii or iii of paragraph *b* of section 109.1, the employer is exempt from the application of section 109.1 to the extent that that is necessary to ensure compliance with the violated agreement, list or order.”

4. Section 111 of the said Code is repealed.

5. The said Code is amended by replacing the heading of Chapter V.1 by the following heading:

“SPECIAL PROVISIONS APPLICABLE TO THE PUBLIC SERVICES
AND TO THE PUBLIC AND PARAPUBLIC SECTORS”.

6. The said Code is amended by inserting, between the heading of Chapter V.1 and section 111.1, the following:

“ DIVISION I

“CONSEIL DES SERVICES ESSENTIELS

“111.0.1 A council is hereby established under the name of the Conseil des services essentiels.

“111.0.2 The council is composed of eight members including a president.

“111.0.3 The members of the council are appointed by the Government, on the proposal of the Minister.

“111.0.4 The members other than the president are appointed in the following manner:

(a) two persons, one chosen after consultation with the most representative associations of employees in the public services sector, and the other, after consultation with the most representative associations of employees in the health and social services sector;

(b) two persons, one chosen after consultation with the most representative employers’ associations in the public services sector, and the other, after consultation with the most representative employers’ associations in the health and social services sector;

(c) three persons chosen after consultation with the Commission des droits de la personne, the Office des personnes handicapées du Québec, the Comité de la protection de la jeunesse, the Public Protector and other persons and agencies.

“111.0.5 The president of the council is appointed for not over 5 years. The other members are appointed for not over three years.

The members of the council remain in office until they are reappointed or replaced.

If a member does not complete his term, he is replaced in the manner provided in section 111.0.3 or 111.0.4, as the case may be, for the remainder of the term.

“111.0.6 The Government shall fix the salary, or as the case may be, the additional salary, allowances or fees of the members of the council.

“111.0.7 The president of the council is responsible for the administration of the council within the scope of its internal management by-laws and has the management of its personnel.

“111.0.8 The members, including the president, shall decide all questions by a majority of votes; in case of a tie-vote, the president has a casting vote.

“111.0.9 The council may adopt internal management by-laws and establish local and regional offices.

“111.0.10 The council may retain the services of persons to help the parties to reach an agreement in accordance with sections 111.0.18 and 111.10, to advise it on the assessment of the services provided for in an agreement or in a list or to report to it on the maintenance of essential services during a strike.

“111.0.11 The council must further the awareness of the parties in respect of the maintenance of essential services during a strike.

The council also may inform the public on any question relating to the maintenance of essential services.

“111.0.12 In the case of an establishment contemplated in paragraph 2 of section 111.2, the council shall determine by regulation, after consulting the parties at the provincial level, the form and the components of an agreement or list, including recipients' freedom of access to the establishment. It shall also prepare the rules that must be observed by the parties in reaching an agreement or establishing a list.

Every regulation contemplated in the first paragraph must be approved by the Government, which may amend it. It comes into force on the day of its approval or on any later date indicated therein, and must be published in the *Gazette officielle du Québec*.

“111.0.13 The council may, in accordance with the standards, scales and staffing requirements determined by the Gov-

ernment, retain the services of any person as an employee or otherwise for the carrying out of its functions and fix his remuneration, social benefits and other conditions of employment.

[[“**111.0.14** The sums required by the council for the application of this chapter are taken out of the consolidated revenue fund.]]

“DIVISION II

“PUBLIC SERVICES

“**111.0.15** The provisions of this Code apply to labour relations in a public service, except where they are inconsistent with this division.

“**111.0.16** In this division, “public service” means

- (1) a municipal corporation or intermunicipal agency;
- (2) an establishment or regional council within the meaning of paragraphs *a* and *f* of section 1 of the Act respecting health services and social services (R.S.Q., chapter S-5) that is not contemplated in paragraph 2 of section 111.2;
- (3) a telephone service;
- (4) a fixed schedule land transport service such as a railway or a subway, or a transport service carried on by bus or by boat;
- (5) an undertaking engaged in the production, transmission, distribution or sale of gas, water or electricity;
- (6) a home-garbage removal service;
- (7) an ambulance service or the Canadian Red Cross Association; or
- (8) an agency that is a mandatary of the Government, except the Société des alcools du Québec and an agency or body whose personnel is appointed and remunerated in accordance with the Civil Service Act.

“**111.0.17** On the recommendation of the Minister, the Government, if of the opinion that a strike in a public service might endanger the public health or public safety, may, by order, require an employer and a certified association in that public service to maintain essential services in the event of a strike.

The order comes into force on the date it is made or on any later date indicated therein and has effect until the filing of a collective agreement or of another document in lieu thereof. It must be made

not later than fifteen days before the certified association concerned acquires the right to strike. The order must be published in the *Gazette officielle du Québec* and in a French newspaper circulated in the region where that public service is provided.

"111.0.18 In a public service contemplated in an order made pursuant to section 111.0.17, the parties must negotiate what essential services must be maintained in the event of a strike. The parties shall forward their agreement to the council.

The council, of its own initiative or at the request of either party, may designate a person to help the parties to reach an agreement.

If no agreement is reached, the certified association must forward to the employer and to the council a list determining the essential services that must be maintained in the service concerned in the event of a strike. In no case may the list be amended thereafter except at the request of the council. If an agreement is entered into between the parties after the list is filed, the agreement prevails.

"111.0.19 On receiving an agreement or a list, the council shall assess whether or not the essential services provided for therein are sufficient.

If the council considers the services to be insufficient, it may, before reporting it to the Minister pursuant to section 111.0.20, make the appropriate recommendations to the parties to amend the agreement or the list.

"111.0.20 The council must report every case to the Minister where the essential services provided for in an agreement or in a list are insufficient, or are not rendered during a strike.

The report must specify how the essential services provided for or actually rendered are insufficient and to what extent that constitutes a danger to the public health or public safety.

"111.0.21 The council must inform the public of the content of any report made to the Minister under section 111.0.20.

"111.0.22 No person may derogate from the provisions of an agreement or a list.

Any list providing for a number of employees greater than the number ordinarily required in the service concerned is null and void.

"111.0.23 Subject to section 111.0.24, a certified association in a public service may declare a strike provided it has acquired the

right to strike in accordance with section 58 and has given to the Minister and the employer, and to the council in the case of a public service contemplated in an order made under section 111.0.17, a prior notice in writing of not less than seven clear days of the time when it intends to go on strike.

In no case may the strike notice be renewed until after the day indicated in the original notice as the time when the certified association intended to go on strike.

In the case of a public service contemplated in an order made under section 111.0.17, no strike may be declared by a certified association unless an agreement is forwarded to the council or a list is forwarded to the council and to the employer.

“111.0.24 In a public service contemplated by an order made under section 111.0.17, the Government, on the recommendation of the Minister, may, by order, suspend the right to strike if it is of opinion that the essential services provided for or actually rendered where a strike is apprehended or in progress are insufficient and that it endangers the public health or public safety.

The suspension has effect until proof is made to the satisfaction of the Government that where the right to strike is exercised, essential services will be sufficiently maintained in that public service.

Every order made under the first paragraph comes into force on the day it is made or on any later date indicated therein. It must be published in the *Gazette officielle du Québec* and in a French newspaper circulated in the region where the public service concerned is provided.

“111.0.25 Only the Attorney General may apply for an injunction in the case of refusal to observe the suspension of the right to strike ordered under section 111.0.24.

“111.0.26 Lock-out is prohibited in a service contemplated in an order made under section 111.0.17.

“DIVISION III

“PUBLIC AND PARAPUBLIC SECTORS”.

7. Sections 111.1 and 111.2 of the said Code are replaced by the following sections:

“111.1. Excluding Division I.1 of Chapter IV, the provisions of this Code apply to labour relations in the public and parapublic sectors except where they are inconsistent with this division.

“111.2 In this division,

(1) “public and parapublic sectors” means the Government and the government departments and those government agencies and bodies whose personnel is appointed or remunerated in accordance with the Civil Service Act, as well as the colleges, school boards and establishments contemplated in the Act respecting management and union party organization in collective bargaining in the sectors of education, social affairs and government agencies (R.S.Q., chapter O-7.1);

(2) “establishment” means an establishment contemplated in paragraph *f* of section 1 of the Act respecting management and union party organization in collective bargaining in the sectors of education, social affairs and government agencies.”

8. Section 111.5 of the said Code is repealed.

9. Section 111.8 of the said Code is amended by striking out the expression “and to the committee of information on negotiations” wherever it appears.

10. Section 111.9 of the said Code is repealed.

11. Section 111.10 of the said Code is replaced by the following section:

“111.10. In the case of an establishment, the parties must negotiate the number of employees per care unit and class of services to be maintained in the event of a strike. The parties shall forward their agreement to the council.

The council, of its own initiative or at the request of either party, may designate a person to help the parties to reach such an agreement.

If no agreement is reached, the certified association must, not later than ninety days before the date of expiry of the collective agreement or the document in lieu thereof, transmit to the employer and to the council a list determining the number of employees per care unit and class of services maintained by the establishment in the event of a strike. In no case may the list be amended thereafter, except at the request of the council. If an agreement is entered into between the parties after the list is filed, the agreement prevails.”

12. The said Code is amended by inserting, between sections 111.10 and 111.11, the following sections:

“111.10.1 On receiving an agreement or a list, the council shall assess, particularly, with reference to the rules set forth in

accordance with section 111.0.12, whether or not the essential services provided for therein are sufficient.

If the council considers the services to be insufficient, it may, before reporting it to the Minister pursuant to section 111.10.2, make the appropriate recommendations to the parties to amend the agreement or the list.

“111.10.2 The council must report every case to the Minister where the essential services provided for in an agreement or list are insufficient or are not rendered during a strike.

The report must specify how the essential services provided for or actually rendered are insufficient and to what extent that constitutes a danger to public health or public safety.

“111.10.3 The council must inform the public of the content of any report made to the Minister under section 111.10.2.

“111.10.4 No person may derogate from the provisions of an agreement or a list.

Any list providing for a number of employees per care unit or per class of service greater than the number ordinarily required in the establishment concerned is null and void.

“111.10.5 Where a person appointed by the council is making an inquiry on the maintenance of essential services in an establishment during a strike, the parties must allow him to meet beneficiaries or members of their families.

“111.10.6 Every regional health and social service council established under the Act respecting health services and social services must immediately inform the Conseil des services essentiels of every complaint that it receives relating to essential services within the meaning of this chapter.”

13. Section 111.11 of the said Code is amended by replacing the first paragraph by the following paragraph:

“111.11. Subject to section 111.15, a party may declare a strike or a lock-out on the date of expiration of the collective agreement or the document in lieu thereof, provided that a prior notice of at least seven clear days has been given in writing to the Minister and, to the other party and, in the case of an establishment, to the council, indicating the time when it intends to resort to a strike or a lock-out.”

14. Section 111.12 of the said Code is replaced by the following section:

“111.12. In the case of an establishment, no strike may be declared by a certified association unless an agreement has been forwarded to the council or a list has been forwarded to the council and to the employer.”

15. The said Code is amended by adding, after section 111.12, the following sections:

“111.13 On the recommendation of the Minister, the Government may, by order, suspend the right to strike in an establishment if it is of opinion that in the case of apprehended strike or of a strike in progress the essential services provided for or actually rendered are insufficient and that this endangers the public health or public safety.

The suspension has effect until it is proved to the Government that in the event of a strike essential services will be sufficiently maintained in the establishment.

Every order made under the first paragraph comes into force on the day it is made or on any later date indicated therein. It must be published in the *Gazette officielle du Québec* and in a French newspaper circulated in the region where the establishment is situated.

“111.14 Only the Attorney General may apply for an injunction in the case of refusal to observe the suspension of the right to strike ordered under section 111.13.

“111.15 Lock-out is prohibited in an establishment.”

16. The said Code is amended by adding, after section 140, the following section:

“140.1 No recourse may be exercised by reason or as a result of a report made by the council under Chapter V.1 or publications relating thereto, as the case may be, or by reason of acts performed in good faith and in the exercise of their functions by the members of the council or by persons appointed by it in accordance with sections 111.0.10 or 111.0.13.”

17. Section 142 of the said Code is replaced by the following section:

“142. Any person declaring or instigating a strike or lock-out contrary to the provisions of this Code, or participating therein, is liable, for each day or part of a day during which the strike or lock-out continues, to a fine

(1) of \$25 to \$100, in the case of an employee;

(2) of \$1 000 to \$10 000, in the case of a senior officer or employee of an association of employees or of an administrator, agent or adviser of an association of employees or of an employer;

(3) of \$5 000 to \$50 000, in the case of an employer, an association of employees or a union, federation or confederation to which an association of employees is affiliated or belongs.”

18. The said Code is amended by adding, after section 143, the following section:

“**143.1** Any person who impedes or hinders the action of the council established by section 111.0.1 or of a person appointed by it or any person who misleads them by concealment or misrepresentation is guilty of an offence and liable, for each day or part of a day during which the offence continues, to a fine

(1) of \$25 to \$100, in the case of an employee;

(2) of \$100 to \$500, in the case of a senior officer or employee of an association of employees or of an administrator, agent or adviser of an association of employees or of an employer;

(3) of \$500 to \$1 000, in the case of an employer, an association of employees or a union, federation or confederation to which an association of employees is affiliated or belongs.”

19. The said Code is amended by adding, after section 146.1, the following section:

“**146.2** Every association of employees and every employer that contravenes an agreement or a list contemplated in sections 111.0.18 and 111.10, and every association of employees that fails to take the appropriate means to induce the employees it represents to comply with the agreement or the list is guilty of an offence and liable to a fine of \$1 000 to \$10 000 for each day or part of a day during which the offence continues.”

20. Article 1010 of the Code of Civil Procedure (R.S.Q. chapter C-25) is replaced by the following article:

“**1010.** The judgment dismissing the motion is subject to appeal *pleno jure* by the applicant or, by leave of a judge of the Court of Appeal, by a member of the group on behalf of which the motion had been presented. The appeal is heard and decided by preference.

The judgment granting the motion and authorizing the exercise of the recourse is without appeal.”

21. The said Code is amended by inserting after article 1010, the following article:

“1010.1 Unless inconsistent therewith, Title III applies, *mutatis mutandis*, to this title.”

22. Article 1011 of the said Code is amended

(1) by adding, at the end of the first paragraph, the following sentence: “The notice must also be published at least fifteen days before the date of presentation of the motion, in the same manner as the notice of the judgment granting the motion to authorize the bringing of the class action, unless the court orders another mode of publication.”;

(2) by inserting the words “or another member requesting to be substituted for him” after the word “representative” in the first line of the second paragraph.

23. Article 1048 of the said Code is replaced by the following article:

“1048. A corporation incorporated under Part III of the Companies Act (R.S.Q., chapter C-38), an association established under the Cooperatives Associations Act (R.S.Q., chapter A-24) or a group contemplated in the second paragraph of article 60, may apply for the status of representative, if:

(a) one of its members designated by it is a member of the group on behalf of which it intends to bring a class action; and

(b) the interest of that member is linked to the objects for which the corporation, the association or the group has been incorporated or formed.

The affidavit required in support of the motion for authorization is then signed by the member designated under subparagraph *a* of the first paragraph.”

24. The said Code is amended by adding, after article 1050, the following article:

“1050.1 In the case of a condemnation to pay the costs, the judicial fees are computed as in the case of an action of class II-A in the Tariff of judicial fees passed under subsection 2 of section 125 of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) and, in the computation, section 23 of the tariff does not apply.

No special fee provided for in the tariff to take the importance of a case into account may be granted except on a motion of the attorney served on the adverse party and on the Fonds d’aide au recours collectif if he has complied with the obligation provided in the first paragraph of section 32 of the Act respecting the class action (R.S.Q., chapter R-2.1); the court shall not then take into account the fact that the Fonds d’aide au recours collectif has guaranteed all or part of the expenses.”

25. Sections 43 and 44 of the Act respecting the class action (R.S.Q., chapter R-2.1) are replaced by the following sections:

“43. The Fonds may, with respect to the assistance it grants,

(a) spend the sums placed at its disposal for that purpose by the Minister of Justice and those which have been withheld in accordance with section 42;

(b) also make, annually, financial commitments other than a loan for an amount up to the amount determined by the Minister of Justice at the time of approval of the budget of the Fonds.

“44. In addition to its powers under section 43, the Fonds may, with the prior authorization of the Minister of Justice, contract a loan in respect of the assistance it grants or in order to carry on its operations.

“44.1 The Government, on such conditions as it determines, may

(a) undertake to supply the liquidity fund required by the Fonds so as to enable it to repay the capital and interest of a loan contracted by the Fonds, when due;

(b) guarantee the payment, in capital and interest, of any loan or other financial commitment contracted or made by the Fonds.

The sums required for the purposes of this section are taken out of the consolidated revenue fund.”

26. Sections 20 to 24 do not apply to a motion to authorize the bringing of a class action or to a demand for a class action presented or instituted before the (*insert here the date of the tabling of Bill 72*).

27. In the case of a public service in which an association of employees has acquired the right to strike before (*insert here the date of the 21st day following the date of the sanction of Bill 72*), the Government, on the recommendation of the Minister of Labour, Manpower and Income Security, may order an employer and an association of employees in that public service to maintain essential services in the event of a strike where, in its opinion, a strike in that public service would endanger the public health or public safety.

The order must be made before the date mentioned in the first paragraph; it comes into force on the day it is made. It must be served on the employer and the association of employees contemplated therein, and has effect until the filing of a collective agreement or the document in lieu thereof.

Sections 111.0.18 to 111.0.26 of the Labour Code, enacted by section 6, apply *mutatis mutandis* to the employer and the association of employees contemplated in the order.

The order suspends every strike which, at the time the order is made, is in progress in the public service concerned, and the strike shall not then be declared again except in accordance with section 111.0.23 of the Labour Code, enacted by section 6.

28. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (*insert here the reference to the chapter number of the Canada Act in the compilation of the Acts of the Parliament of the United Kingdom for 1982*).

29. This Act comes into force on the day of its sanction.