

NATIONAL ASSEMBLY OF QUÉBEC

Bill 5

**An Act to amend the Transport Act
and other legislation**

First reading
Second reading
Third reading

M. MICHEL CLAIR
Minister of Transport



EXPLANATORY NOTES

The object of this bill is to amend the Transport Act.

It enables the Government to grant additional jurisdiction over truck transport of bulk materials to the Commission des Transports, and to establish a procedure for the filing of tariffs.

It revises the organization and operation of the Commission des transports. Thus, it provides for public hearings before a sole member of the Commission, and for the taking of testimony by an inquiry commissioner.

The bill sets up an internal mechanism to review decisions of the Commission, and reintroduces appeals from these decisions to the Court of Appeal.

The bill brings the various penalties up to date, and sets up a mechanism by which the Commission may withdraw permits and order the withdrawal of the registration plates and certificates of vehicles used for unlawful transport.

Lastly, the bill amends the provisions governing regional public transport bodies to enable the Government to exempt them from all or part of the regulations made under the Transport Act.

Bill 5

An Act to amend the Transport Act and other legislation

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

1. Section 1 of the Transport Act (R.S.Q., chapter T-12) is amended by adding, at the end, the following paragraph:

“For the purposes of this Act, transport brokerage comprises the distribution of services among carriers holding a permit for the transport of bulk materials referred to in section 18.”

2. Section 5 of the said Act is amended

(1) by replacing subparagraph *b* by the following subparagraph:

“(b) prescribe conditions for the maintaining, assignment or transfer of a permit where there is a transfer of ownership or change of control of a means of transport or a transport system, or an acquisition contemplated in section 44;”;

(2) by adding, after subparagraph *c*, the following subparagraph:

“(c.1) prescribe the terms and conditions applicable for the renewal of permits and determine the cases where a permit may be renewed by the administrator of the Commission;”;

(3) by adding, after subparagraph *e*, the following subparagraphs:

“(e.1) prescribe, for any service or any territorial division, that rates and tariffs are governed by a procedure of filing with the Commission, determine the terms and conditions of such procedure and the rules applicable for their coming into force;

“(e.2) grant exemption from payment to a group of persons for a transport service that is subject to the application of this Act;”;

(4) by adding, after subparagraph *p*, the following subparagraph:

“(p.1) determine the standards and conditions for the establishment, operation, financing and management applicable to persons who wish to provide or who are providing a transport brokerage service to the carriers holding a permit for the transport of any of the bulk materials referred to in section 18;”;

(5) by adding, after subparagraph *q*, the following paragraph:

“The Government, by regulation, may generally or specially delegate the exercise of its powers under paragraph *p.1* to the Commission.”

3. Section 8 of the said Act is amended by adding the following paragraphs:

“The Government, by regulation, may generally or specially transfer the exercise, in whole or in part, of its power of approval under the first paragraph to the Commission.

The Minister or the Commission, as the case may be, may approve all or part of a regulation referred to in the first paragraph or withdraw approval given to all or part of a regulation. In the latter case, the regulation or part of the regulation from which approval is withdrawn becomes void from the date fixed in the notice of withdrawal of approval published in the *Gazette officielle du Québec*.”

4. Section 16 of the said Act is replaced by the following sections:

“16. The Commission consists of fourteen members, including a president and two vice-presidents, appointed for a term of not over five years by the Government, which shall fix their salaries and their other conditions of employment.

The members remain in office at the expiry of their terms until they are reappointed or replaced.

“16.1 One of the vice-presidents shall be appointed to the corporate seat and the other, to the office situated in the territory of the Communauté urbaine de Montréal.”

5. Section 17 of the said Act is replaced by the following sections:

“17. The Commission sits in five divisions, namely, in plenary session, in public hearing, in session, in practice, and in review.

“17.1 The quorum of the Commission is,

- (a) in plenary session: eight members, including the president, who may designate a member to replace him;
- (b) in public hearing, in session, and in practice: one member;
- (c) in review: three members.

“17.2 A decision rendered by a sole member may be reviewed, with permission, where procedure has not been followed or a substantive defect might vitiate the decision.

“17.3 The application for permission is made in practice division by way of a motion clearly and concisely setting out the reasons on which it is based. The motion must be made within thirty days after publication of the decision or of a summary of it in the *Bulletin de la Commission* provided for in section 48.1.

“17.4 Where the practice division permits a decision to be reviewed, the permission therefor suspends the execution of the decision, unless the division orders provisional execution in cases of special urgency or in the cases provided for in the second paragraph of section 23.

“17.5 The Commission may sit simultaneously in several divisions in the same locality or in different localities.

“17.6 If the president or a member of the Commission is unable to act by reason of absence or illness, the Government may appoint another person to replace him temporarily and fix his salary.

“17.7 During his vacation, the president is replaced by the vice-president designated by him; in no case does such a designation entail any additional salary.”

6. Section 19 of the said Act is amended by replacing the first paragraph by the following paragraph:

“19. The administrator of the Commission, the secretary, the inquiry commissioners, the investigators and the other members of the personnel of the Commission are appointed and remunerated in accordance with the Civil Service Act (R.S.Q., chapter F-3.1).”

7. Section 20 of the said Act is replaced by the following section:

“20. The members of the Commission shall carry on their duties full time.”

8. Section 22 of the said Act is amended by replacing the third paragraph by the following paragraph:

“The Commission may revise or revoke, for cause, any decision it has rendered; but in no case may it exercise this power on the application of a party in a matter for which an application for review has been made in conformity with sections 17.2 and 17.3.”

9. Section 23 of the said Act is amended by replacing the first paragraph by the following paragraph:

“23. A decision of the Commission becomes executory thirty days after it has been published, in complete form or in summary form, in the *Bulletin de la Commission*.”

10. Section 32 of the said Act is amended by replacing subparagraph *d* by the following subparagraph:

“(d) in its own right or at the request of the Minister or any interested person, fix rates and tariffs, which may include minimum, maximum or both minimum and maximum rates and tariffs;

“(d.1) in its own right or at the request of the Minister or any interested person, maintain, amend or revoke all or part of the rates and tariffs that have been filed, which may include minimum, maximum or both minimum and maximum rates and tariffs;”.

11. The said Act is amended by adding, after section 34, the following section:

“34.1 The Commission may, in plenary session and within the scope of the regulations, set down principles for the management of its affairs. It may, further, set down principles where there is no regulation to determine the scope within which the powers provided for in section 32 may be exercised.”

12. Section 37 of the said Act is amended by adding the following paragraph:

“In the cases provided by regulation, a permit may be renewed by the administrator of the Commission; within the scope of the regulations, the Commission may review such a renewal.”

13. Section 40 of the said Act is replaced by the following sections:

“40. The Commission may, in its own right or at the request of the Minister or any interested person, change, suspend or revoke the permit of a carrier if he

(a) has been found guilty of an offence against this Act, the regulations or an order or if he has been found guilty of an indictable offence related to the operation of his means of transport or transport system;

(b) discontinues, limits or extends the services he is authorized to provide under his permit without prior authorization from the Commission; or

(c) does not provide service up to the standard the public is entitled to expect, all things considered.

In the cases referred to in the first paragraph, the Commission may further order the Régie de l'assurance automobile du Québec to withdraw the registration plate and registration certificate from any vehicle used by the holder of a permit contrary to this Act, a regulation or an order.

The Commission may, in its own right or at the request of the Minister or any interested person, order the Régie de l'assurance automobile du Québec to withdraw the registration plate and registration certificate from any vehicle used by a person not holding a permit, where the vehicle has been used contrary to this Act, a regulation or an order.

“40.1 In no case may the Commission exercise the power provided for in section 40 unless the offender has been summoned to appear before it to hear the proof of the facts he is accused of and plead any arguments he may have in his defence, and unless he has been heard or has failed to appear.

Sections 16, 17 and 18 of the Summary Convictions Act (R.S.Q., chapter P-15) apply, *mutatis mutandis*, to every summons provided for in this section.

“40.2 In the cases referred to in the second and third paragraphs of section 40, the Régie de l'assurance automobile du Québec must forthwith carry out the Commission's order and may in no case return the registration plate and the registration certificate to the former holder or issue new ones to him without prior authorization from the Commission.”

14. Section 41 of the said Act is replaced by the following section:

“41. The transfer, in any form, by a carrier, of the ownership or control of a means of transport or a transport system that he operates by virtue of a permit does not effect the transfer of such permit unless the assigning party or the transferee of such means

of transport or transport system applies to the Commission for the transfer of such permit, and obtains such transfer from it.

The Commission may, even if there is no regulation applicable, maintain, change, transfer or cancel a permit, in the case of a transfer of ownership or the change of control of a means of transport or a transport system.”

15. Sections 42 and 43 of the said Act are replaced by the following sections:

“42. A permit holder shall provide the services his permit authorizes him to provide, on the conditions and by the means or systems prescribed by the regulations applicable to his permit.

“43. No permit holder may discontinue, reduce or extend the services his permit authorizes him to provide or change the conditions thereof without prior authorization from the Commission.”

16. Section 44 of the said Act is replaced by the following section:

“44. Every person or firm intending to acquire, directly or indirectly, by purchase, lease, merger, consolidation or otherwise, an interest in the business or undertaking of a person whose main occupation is transport, must give to the Commission notice of the intended acquisition; this notice brings the matter before the Commission, and it may, within the scope of the regulations, maintain, amend or revoke any permit concerned.

Even if no notice is given, the Commission, in its own right or at the request of the Minister or any interested person, may make an inquiry to determine whether an acquisition within the meaning of the first paragraph has been made and, if so, it may, within the scope of the regulations, maintain, amend or revoke any permit concerned.

In the cases contemplated in the first two paragraphs, the Commission, where there is no regulation applicable, may maintain, amend or revoke any permit concerned.”

17. Section 45 of the said Act is replaced by the following section:

“45. In the cases referred to in sections 41 and 44, the Minister may, by a written notice to the Commission, remove a case from the jurisdiction of the Commission and refer it to the Government. However, where no application for a transfer nor any notice of an intended acquisition has been published in the *Bulletin de la Commission*, the Commission, before rendering its decision, shall

advise the Minister in writing that there has been an application for a transfer or a notice of acquisition. The Minister may, within fifteen days after publication of the notice in the *Bulletin de la Commission* or after receipt of the notice, as the case may be, by letter, telegram or any other means of communication, remove the case from the jurisdiction of the Commission and refer it to the Government.

Where the Minister uses his powers under the first paragraph, the administrator must give a copy of the record to him and notify the parties in writing that the case has been removed from the jurisdiction of the Commission.

The Government may, in the public interest, maintain, change, revoke or transfer the permit concerned, with or without conditions; it shall publish its decision in the *Gazette officielle du Québec* and the Commission shall publish it in the *Bulletin de la Commission*."

18. Section 46 of the said Act is replaced by the following section:

"46. Where an application for the fixing of rates or tariffs has been made to the Commission or a rate or tariff has been filed therewith and the applicant or the person to whom it is applicable discontinues the whole or part of his application after the commencement of a public hearing, the Commission, notwithstanding such discontinuance, may pursue the hearing and fix rates and tariffs or, as the case may be, maintain, change or revoke them."

19. Section 47 of the said Act is replaced by the following section:

"47. No carrier may claim a remuneration where a rate or tariff is applicable, except in conformity with that rate or tariff.

Where, for a given service, there is no applicable rate or tariff, no carrier may claim a remuneration where rate and tariff standards have been prescribed by regulation, except in conformity with those standards."

20. The said Act is amended by adding, after section 48, the following section:

"48.1 The administrator of the Commission shall publish a bulletin called the *Bulletin de la Commission* at such intervals and according to such terms and conditions as may be fixed by regulation of the Government.

The *Bulletin de la Commission* must contain the legal notices prescribed by this Act and the regulations, the decisions rendered by the Commission, or summaries thereof, and, as the case may be, the forms prescribed by the president and the applications made to the Commission, or summaries thereof.”

21. Section 49 of the said Act is replaced by the following sections:

“49. In exercising its powers, the Commission or a person designated generally or specially by the president or one of the vice-presidents may inquire into any matter within its jurisdiction.

“49.1 The Commission, any person designated by it and any investigator of the Department has, to inquire into any fact related to the application of this Act, the regulations and the orders, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to impose imprisonment.

“49.2 The Commission may adjourn a plenary session, a public hearing or a session and order the holding of an inquiry into a matter; the report of the inquiry then forms part of the record of the matter.

“49.3 The Commission may order that one or more witnesses be heard before an investigation commissioner; the testimonies then received form part of the proof as if they had been received in a public hearing or in session.

“49.4 A member of the Commission, a person designated by it or an investigator of the Department may, during business hours, enter the establishment of a carrier, a consignor or a consignee and inspect it; he may, in particular, examine the books, registers, accounts or other documents and make extracts from or copies of them.

“49.5 A member of the Commission, a designated person or an investigator may require any information from any person in connection with the application of this Act, the regulations or the orders, and the production of any document relating thereto.”

22. Section 50 of the said Act is replaced by the following sections:

“50. It is forbidden to hinder the work of a member of the Commission, a designated person or an investigator of the Depart-

ment in the discharge of his duties, to mislead him by concealment or false declarations, to refuse to give him information or a document he is entitled to require or examine under this Act, or to conceal or destroy any document or property pertaining to an inquiry.

“50.1 Every person authorized by this Act to make an inquiry or inspection must show, if he is required to do so, a certificate of his office.”

23. The said Act is amended by adding after section 50.1 the following division, title and sections:

“DIVISION VII

“APPEAL

“51. Decisions of the Commission may be appealed from to the Court of Appeal, with the permission of a judge of that court, where they refer to a question of jurisdiction or of law which, in the opinion of that judge, should be submitted to the Court of Appeal.

“52. The appeal is brought in conformity with the rules of the Code of Civil Procedure, except as provided in sections 53 to 56.

“53. The petition for permission to bring an appeal must be submitted within thirty days after publication of the decision of the Commission, or of a summary of the decision, in the *Bulletin de la Commission*, by a motion accompanied with a copy of the decision and the documents related to the dispute, if they are not reproduced in the decision.

“54. Any party, any intervening party and the Attorney General may appeal from a decision of the Commission. The Attorney General may, *ex officio* and without notice, take part in the hearing as if he were a party thereto.

“55. If the appeal is permitted, it is brought by way of an inscription filed in the office of the Court of Appeal within ten days after the judgment authorizing the appeal.

“56. For the purposes of this division, any expression in the Code of Civil Procedure designating the prothonotary of the Superior Court designates the secretary of the Commission and any expression designating the court whose judgment is appealed from designates the Commission.”

24. Section 73 of the said Act is replaced by the following section:

“73. Every person who contravenes section 50 is guilty of an offence and is liable on summary proceedings to a fine of not under \$200 nor over \$1000.”

25. Section 74 of the said Act is replaced by the following sections:

“74. Every person who contravenes any provision of this Act, the regulations or an order for which no penalty is otherwise provided or refuses to comply with an order made pursuant to this Act, the regulations or an order or knowingly makes a false declaration respecting a matter before the Commission is guilty of an offence and is liable, on summary proceedings, in addition to costs, for each day or part of a day during which the offence continues, to a fine of not less than \$50 nor more than \$500 in the case of a natural person, and of not less than \$50 nor more than \$1000 in the case of an artificial person, for a first offence, and of not less than \$200 nor more than \$1000 in the case of a natural person, and of not less than \$800 nor more than \$5000 in the case of an artificial person for each subsequent offence within the two years following an offence.

“74.1 Every person who contravenes section 36 or 43 is guilty of an offence and is liable, on summary proceedings, in addition to costs, for each day or part of a day during which the offence continues, to a fine of not less than \$100 nor more than \$500 in the case of a natural person, and of not less than \$300 nor more than \$1000 in the case of an artificial person, for a first offence, and of not less than \$500 nor more than \$1000 in the case of a natural person, and of not less than \$1000 nor more than \$5000 in the case of an artificial person for each subsequent offence within the two years following an offence.

“74.2 In the case of an offence against section 47, the offender is liable, in addition to the fine provided for in section 74, to an additional fine representing the difference between the remuneration being the object of the proceedings and the rates in force.

“74.3 Every person who advises, encourages or incites another person to commit an offence against this Act, the regulations or an order or who does or omits to do something in order to aid another person to commit an offence is a party to that offence whether or not the offender has been prosecuted or found guilty.

Penal proceedings shall not be maintained, however, if the defendant proves that he acted in good faith or that he used rea-

sonable diligence in taking all the necessary precautions to see that this Act, the regulation or the order was complied with."

26. Section 75 of the said Act is replaced by the following sections:

"75. An offence, in order to be a subsequent offence within the meaning of section 74 or 74.1, must be an identical offence; in order to prove that offences are identical, there is no need to prove that the vehicles or their drivers involved in the offence being the object of proceedings are the same.

"75.1 In any proceeding for a contravention of this Act, the regulations or an order, all services are deemed to be remunerated, unless there is proof to the contrary.

"75.2 Where this Act prescribes the requirement to hold a permit or to obtain authorization from the Commission, the burden of proof is on the defendant that he is a holder of the permit or has obtained the authorization."

27. Section 76 of the said Act is replaced by the following section:

"76. Part II of the Summary Convictions Act applies to proceedings contemplated in sections 73 to 74.1."

28. The said Act is amended by adding, after section 77, the following section:

"77.1 A peace officer may, where a person commits an offence against this Act, the regulations or an order, give to him a notice enjoining him to remedy the alleged offence within a period of 72 hours. An action may be brought against the offender if he does not remedy the offence within the prescribed time. The burden of proof is on the offender that he has remedied the offence within the prescribed time."

29. Section 80 of the said Act is replaced by the following section:

"80. A peace officer may, without a warrant,

(a) board and search any vehicle and open or have opened any receptacle where he has reasonable cause to believe that it is being or was used to commit an offence against this Act, the regulations or orders;

(b) seize any vehicle when he has reasonable cause to believe that it is being or was used to commit an offence against this Act,

the regulations or an order and where the carrier who is using or who used such vehicle might abscond, until the competent court or a judge of such court authorizes the release of such vehicle with or without a deposit;

(c) seize any vehicle when he has reasonable cause to believe that it is being or was used to commit an offence against section 36 or extend a service authorized by a permit, until a court having jurisdiction or a judge of such court authorizes the release of such vehicle with a deposit. The peace officer who has seized the vehicle shall keep it until a court having jurisdiction has decided that it shall be confiscated or returned to its owner.”

30. Section 90 of the said Act is replaced by the following section:

“**90.** The Minister is responsible for the application of this Act.”

31. Section 235 of the Outaouais Regional Community Act (1969, chapter 85), amended by section 140 of chapter 55 of the statutes of 1972, is again amended by adding, at the end of the second paragraph, the following: “However, the Government may, by regulation, release the Commission from the obligation of complying with one or several of the provisions of a regulation.”

32. Section 66 of the Charter of the City of Laval (1965, 1st session, chapter 89), enacted by section 25 of chapter 99 of the statutes of 1971 and amended by section 149 of chapter 55 of the statutes of 1972, is again amended by adding, at the end of the second paragraph, the following: “However, the Government may, by regulation, release the Commission from the obligation of complying with one or several of the provisions of a regulation.”

33. Section 38 of the Act to incorporate the Montréal South Shore Transit Commission (1971, chapter 98), amended by section 153 of chapter 55 of the statutes of 1972, by section 104 of chapter 7 of the statutes of 1978 and by section 14 of chapter 104 of the statutes of 1978, is again amended by adding, at the end of the second paragraph, the following: “However, the Government may, by regulation, release the Commission from the obligation of complying with one or several of the provisions of a regulation.”

34. Section 239 of the Québec Urban Community Act (1969, chapter 83), amended by section 128 of chapter 55 of the statutes of 1972, is again amended by adding, at the end of the second paragraph, the following: “However, the Government may, by regulation, release the Commission from the obligation of complying with one or several of the provisions of a regulation.”

35. Section 298 of the Montréal Urban Community Act (1969, chapter 84), amended by section 133 of chapter 55 of the statutes of 1972, is again amended by adding, at the end of the second paragraph, the following: "However, the Government may, by regulation, release the Commission from the obligation of complying with one or several of the provisions of a regulation."

36. The members of the Commission des transports du Québec whose term of office has expired on the date of the coming into force of this section shall cease to exercise their functions not later than the date of the coming into force of section 16 of the Transport Act, replaced by section 4 of this Act.

37. The members of the Commission des transports du Québec whose term of office has not expired on the date of the coming into force of this section remain in office for such time as the Government may determine.

38. Section 1, paragraphs 4 and 5 of section 2 and section 3 have effect from 21 November 1979.

39. This Act will come into force on the date to be fixed by proclamation of the Government except the provisions excluded by the proclamation, which provisions will come into force, in whole or in part, on any later date to be fixed by proclamation of the Government.