

SIXTH SESSION

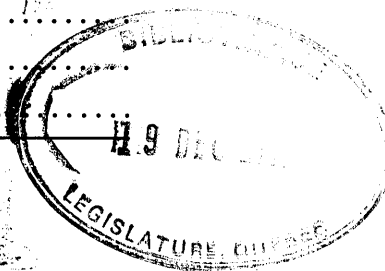
THIRTY-FIRST LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 21

An Act to amend the Transport Act

First reading
Second reading
Third reading



M. DENIS DE BELLEVAL

Minister of Transport

L'ÉDITEUR OFFICIEL DU QUÉBEC

1980

EXPLANATORY NOTES

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

It enables the Government to grant additional jurisdiction over the 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.

Lastly, 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 the unlawful transport of goods.

Bill 21

An Act to amend the Transport Act

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., c. 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.”

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 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 the 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 one 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, or 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 allows a decision to be reviewed, the order 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 (1978, c. 15).”

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 it shall not exercise this power on the application of a party to 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 adding after subparagraph *d*, the following subparagraph:

“(d.1) maintain, amend or revoke all or part of the rates and tariffs which have been filed and 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 orders;

(b) stops, limits or extends the transport services he is authorized to supply under his permit without having been previously authorized by the Commission; or

(c) does not provide a transport service of a 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 owned by a person not holding a permit, where the vehicle has been used contrary to this act, a regulation or an order.

“40.1 The Commission shall not 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 defense, and unless he has been heard or has failed to appear.

Sections 16, 17 and 18 of the Summary Convictions Act (R.S.Q., c. 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 shall not return the registration plate and the registration certificate to the former holder or issue new ones to him without prior authorization by 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. 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 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 cancel any permit concerned.

Even if no notice is given, the Commission, of its own motion or on the motion of the Minister or any interested person, may investigate 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 cancel any permit concerned.

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

16. 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 the publication in the *Bulletin de la Commission* or after the receipt of the notice, as the case may be, remove, by letter, telegram or any other means of communication, such 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*.”

17. 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 rates or tariffs have been filed therewith and the applicant or the person to whom it is applicable discontinues the whole or part thereof after the commencement of a public hearing, the Commission, notwithstanding such discontinuance, may pursue the hearing and fix the rates and tariffs or, if necessary, maintain, change or cancel them.”

18. Section 47 of the said act is replaced by the following section:

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

Where, for a given service, no rate or tariff has been fixed by the Commission, a carrier shall not claim a remuneration where rate and tariff standards have been fixed by regulation, except in conformity with the standards.”

19. 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 *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.”

20. Section 49 of the said act is replaced by the following sections:

“49. In exercising its powers the Commission, or a person designated 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 matter 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., c. 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 in a case; the report on the inquiry then forms part of the record of the case.

“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 enter, during business hours, 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 an extract from or a copy 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.”

21. 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 Department 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.”

22. 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 shall be brought in conformity with the rules of the Code of Civil Procedure, except as provided in sections 53 to 56.

“53. The petition for authorization 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 an application 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 authorized, 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.”

23. 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 not over \$1000.”

24. 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 orders for which no penalty is otherwise provided or refuses to comply with an order made pursuant to this act, the regulations or orders 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 addi-

tion 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 is a party to an offence contemplated in section 74, 74.1 or 74.2 when he does or refrains from doing anything with a view to helping or inciting anyone to commit the offence or when he in any way induces or attempts to induce anyone to commit the offence.

“74.4 Where an offender is found guilty of a third offence within the twelve months following an offence, the Tribunal shall order the removal for one month of the registration plate and registration certificate of the vehicle with which the last offence was committed; in the case of a fourth offence, the period of removal shall be two months and in the case of a fifth offence or of any subsequent offence, the period of removal shall be three months.”

25. 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, 74.1 or 74.4, 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 a proceedings are the same.

“75.1 In any proceeding for a contravention of this act, the regulations or orders, all transport is deemed to be remunerated, unless there is proof to the contrary.

“75.2 In any proceeding for an offence against section 43, the burden of proof that the holder of a permit has obtained the previous authorization of the Commission lies on the holder.”

26. 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.”

27. 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 orders 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 transport service authorized by a permit, until a court having jurisdiction or a judge of such court authorizes such extension 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.”

28. Section 90 of the said act is replaced by the following section:

“90. The Minister has charge of the application of this act.”

29. The members of the Commission des transports du Québec whose term of office has ended on the date of the coming into force of this section cease to exercise their functions at the latest on the date of the coming into force of section 16 of the Transport Act, replaced by section 4 of this act.

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

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

32. 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 will come into force, in whole or in part, on any later date to be fixed by proclamation of the Government.