

NATIONAL ASSEMBLY
Thirty-fourth Legislature, second session

1992, chapter 42

AN ACT TO AMEND THE ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING AND MANPOWER MANAGEMENT IN THE CONSTRUCTION INDUSTRY

Bill 185

Introduced by Mr Normand Cherry, Minister of Labour

Introduced 13 November 1991

Passage in principle 27 November 1991

Passage 23 June 1992

Assented to 23 June 1992

Coming into force: 23 June 1992

Act amended:

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





CHAPTER 42

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

[Assented to 23 June 1992]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. R-20,
s. 1, am.

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

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

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

“independent
contractor”

“(k.1) “independent contractor”: a natural person, a corporation or a partnership holding a specialized contractor’s licence issued under the Building Act (R.S.Q., chapter B-1.1) who or which, for others and without the assistance of an employee, carries out personally or, as the case may be, of which a director, a shareholder holding at least one voting share or a partner personally carries out for the benefit of the corporation or partnership.”.

c. R-20,
s. 3,
replaced
Corporation

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

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

Powers

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

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

(2) borrow money;

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

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

c. R-20,
s. 4, am.

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

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

c. R-20,
s. 18.4, am.

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

c. R-20,
s. 19, am.

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

c. R-20,
ss. 19.1
and 19.2,
added

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

Designation
of repre-
sentative

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

Prohibition

The designated representative shall not, for the term of his designation, be an employee of the corporation or partnership which has designated him.

Presumption

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

Conditions
of designa-
tion

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

Presumption

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

Restriction

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

c. R-20,
s. 48, am.

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

c. R-20,
s. 54, am.

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

c. R-20,
s. 54.1,
added

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

Liability
of prime
contractor

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

c. R-20,
s. 61, am.

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

c. R-20,
s. 82, am.

11. Section 82 of the said Act is amended by adding, after subparagraph *g* of the first paragraph, the following subparagraph:

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

c. R-20,
ss. 82.1
and 82.2,
added

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

Compulsory
levy and
assessment

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

Interest

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

Computation

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

Interest

The interest is not capitalized."

c. R-20,
s. 83, am.

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

c. R-20,
s. 83.1, am.

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

c. R-20,
s. 83.2, am.

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

c. R-20,
s. 92.1,
added

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

Administra-
tion costs

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

c. R-20,
s. 119.1,
am.

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

(1) by replacing the words "the fines provided in section 120" in the second line of that part which precedes paragraph 1 by the words

“a fine of \$400 in the case of an individual and \$1 600 in the case of any other person”;

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

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

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

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

“(11) every person who, contrary to section 19.2, performs construction work otherwise than as an employer, an employee, an independent contractor or a designated representative.”

c. R-20,
ss. 119.2-
119.5,
added

Suspension
of compe-
tency cer-
tificate

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

“119.2 Where a person is convicted of an offence under section 83.1 or under any of paragraphs 1 and 7 to 11 of section 119.1 after having been convicted, within the two years preceding the conviction, of an offence under any of those provisions, his competency certificate or his right to obtain such a certificate or the renewal of such a certificate shall be suspended for a period of one to three months, in addition to the penalty provided for the offence.

Period of
suspension

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

Offence
and
penalty

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

Offence
and
penalty

“119.4 Every person who hires the services of or assigns to construction work an employee while the employee's competency certificate or his right to obtain such a certificate or the renewal of such a certificate is suspended is guilty of an offence and is liable to

a fine of \$1 600 in the case of an individual and \$4 000 in the case of any other person.

Duration
of suspen-
sion

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

c. R-20,
s. 122, am.

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

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

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

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

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

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

(6) by replacing the figure “120” at the end of subsection 5 by the figure “119.1”.

c. R-20,
s. 123, am.

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

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

c. R-20,
ss. 123.4,
123.5,
added

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

“CHAPTER XIII.1

“COMMUNICATION OF INFORMATION

Obtention
of infor-
mation

“123.4 For the purposes of this Act and the regulations, the Commission may obtain from the Minister of Manpower and Income Security, the Minister of Labour and the Régie du bâtiment du Québec, any information and document in their possession relating to the performance of construction work and the persons who perform or cause such work to be performed, which shall be provided to the Commission in accordance with the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1).

Immunity

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

TRANSITIONAL AND FINAL PROVISIONS

Restricted
application

22. Until 31 January 1993, paragraph 2 of section 1 and section 5 of this Act and section 19.2 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20), introduced by section 6 of this Act, do not apply to a corporation or partnership which, on 23 June 1992, held a specialized contractor's licence issued under the Act respecting building contractors vocational qualifications (R.S.Q., chapter Q-1) and for the benefit of which any director, shareholder holding one or more voting shares or partner thereof personally carried out, for others and without the assistance of an employee, construction work within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry, before 23 June 1992.

New compe-
tency cer-
tificate

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

Conditions
for issue

The new competency certificate shall be issued to the person, provided he files an application therefor with the Commission before 31 January 1993 and meets the following conditions:

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

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

Expiration The new competency certificate expires on 1 March 1994. It shall correspond to the journeyman competency certificate, occupation competency certificate or apprentice competency certificate, as the case may be, that the person held, and the Commission shall indicate thereon that its holder is a person contemplated in section 22 of this Act. The certificate is deemed to have been issued under the Regulation respecting the issuance of competency certificates.

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

Issue The competency certificate shall be issued to the person, provided he files an application therefor with the Commission before 31 January 1993 and informs the Commission, in accordance with the procedure established by the latter under section 39 of the Act respecting labour relations, vocational training and manpower management in the construction industry, of his membership in a representative association within the meaning of the said Act.

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

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

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

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

Expiration

A competency certificate so issued expires on 1 March 1994. The Commission shall indicate thereon that its holder is a person contemplated in section 22 of this Act. The certificate is deemed to have been issued under the Regulation respecting the issuance of competency certificates.

Corresponding certificate

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

Designation of representative

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

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

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

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

Notification

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

New representative

A corporation or partnership may, in accordance with the terms and conditions set out in the first and second paragraphs, designate

a new representative to replace the previously designated representative. The new designation replaces, from the date on which it becomes effective, the designation which was effective until then.

Cessation
of effect

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

First
regulation

26. The first regulation made by the Government, before 31 December 1992, to amend the Construction Decree, enacted by Order in Council 172-87 of 4 February 1987 and the amendments thereto, with the approval of both the employers' association and the associations of employees whose representativeness is more than 50 %, within the meaning of the Act respecting labour relations, vocational training and manpower management in the construction industry, and concerning the constitution of the fund and the terms and conditions for the implementation of a developmental training and retraining plan to promote the stabilization of income and employment for workers in the construction industry, may be made without prior publication of a draft regulation in the *Gazette officielle du Québec* and come into force on the date of its adoption and shall be published without delay in the *Gazette officielle du Québec*.

Expiry of
Construc-
tion
Decree

27. The expiry date of the Construction Decree, enacted by Order in Council 172-87 of 4 February 1987 and the amendments thereto, as amended by section 99 of the Decree extending and amending the Construction Decree enacted by Order in Council 695-90 of 21 May 1990, that is 30 April 1993, is deemed to be the original expiry date of a decree referred to in Chapters IV and V of the Act respecting labour relations, vocational training and manpower management in the construction industry.

Substitu-
tions

28. For the purposes of section 27 of this Act, the following substitutions are made in the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20):

(1) the word "seventh" for the word "twelfth" in the eighth line of section 28;

(2) the words "day of the seventh" for the words "of day the twelfth" in the first line of section 29;

(3) in section 30,

i. the word “eighth” for the word “thirteenth” in the first line of subparagraph *c* of the first paragraph;

ii. the word “seventh” for the word “twelfth” in the second line of the second paragraph;

iii. the word “seventh” for the word “twelfth” in the first line of the fourth paragraph;

(4) the words “between the last fifteen days of the seventh month and the first fifteen days of the sixth month” for the words “during the twelfth month” in the third line of the first paragraph of section 31;

(5) in section 32,

i. the words “last fifteen days of the sixth” for the word “eleventh” in the first line of the first paragraph;

ii. the word “three” for the word “five” in the fourth line of the second paragraph;

(6) the word “fourth” for the word “eighth” in the first line of the third paragraph of section 34;

(7) the word “fourth” for the word “eighth” in the first line of the second paragraph of section 36;

(8) the word “fifth” for the word “ninth” in the third line of section 37;

(9) the word “third” for the word “seventh” in the first line of the second paragraph of section 42.

Regulation
amended

29. The Regulation respecting the holding of a secret ballot among the employees of the construction industry, approved by Order in Council 1559-87 of 7 October 1987 is amended

(1) by replacing section 2 by the following section:

Voting

“2. Voting shall take place from 19 to 21 November 1992 at the following hours:

– on 19 and 20 November 1992 from 9 h to 20 h 30;

– on 21 November 1992 from 9 h to 16 h 30.”;

(2) by replacing the words “classification certificate” in the first paragraph of section 12 by the words “competency certificate”;

(3) by replacing the figures and word “9 November 1987” in the first paragraph of section 18 by the figures and word “23 November 1992”.

Presumption The said Regulation, as amended, is deemed to have been adopted in accordance with the Act respecting labour relations, vocational training and manpower management in the construction industry.

Coming into force **30.** This Act comes into force on 23 June 1992.