

1983, chapter 1

**AN ACT TO ENSURE THE RESUMPTION OF SERVICES
IN THE SCHOOLS AND COLLEGES
IN THE PUBLIC SECTOR**

Bill 111

Introduced by Mr Raynald Fréchette, Minister of Labour

First reading: 15 February 1983

Second reading: 16 February 1983

Third reading: 17 February 1983

Assented to: 17 February 1983

Coming into force: 17 February 1983

Act amended:

Act respecting the conditions of employment in the public sector (1982, chapter 45)





CHAPTER 1

An Act to ensure the resumption of services in the schools
and colleges in the public sector

[Assented to 17 February 1983]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION

Interpre-
tation:

1. In this Act, unless the context indicates otherwise,

“association
of
employees”

“**association of employees**” means an association certified pursuant to the Labour Code (R.S.Q., chapter C-27) to represent teachers employed by an employer;

“congress”

“**congress**” means the Centrale de l’enseignement du Québec, The Provincial Association of Catholic Teachers of Québec (PACT) and the Association provinciale des enseignants protestants du Québec;

“employer”

“**employer**” means a college or a school board 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);

“employee”

“**employee**” means an employee within the meaning of the Labour Code who is included in a bargaining unit for which an association of employees is certified.

DIVISION II

CONTINUANCE OF SERVICES

2. Every employee employed by an employer on 25 January 1983 shall, not later than 17 February 1983, taking account of his work schedule, return to work.

Exception The first paragraph does not apply to an employee who has resigned if his resignation has been accepted by his employer or to an employee who avails himself of his right to retire.

3. From the same time and until 31 December 1985, an employee must perform all the duties attached to his functions pursuant to the conditions of employment that are applicable to him, without stoppage, slow-down or reduction of his ordinary activities.

4. Every employer shall, from 17 February 1983, take the appropriate measures to ensure that his usual services are provided.

5. Every association of employees and every union, federation, confederation, congress or council to which, on 25 January 1983, an association of employees belongs or is affiliated or of which it is a member must take the appropriate measures to induce the employees represented by the association of employees to comply with section 2 and section 3.

6. If the Government is of opinion that the employees of an employer or of a category of employers that it determines are not complying with section 2 or section 3 in sufficient number to ensure that services it deems adequate are provided in a school or college, it may, by order, from such date, for such time and on such conditions as it may fix,

(1) replace, amend or strike out any stipulation of the collective agreement binding the employer and the association of employees which represents such employees, respecting the rules by which an employer fills a position, the hiring of new teachers and any matter related to work organization;

(2) make the provisions relating to dismissal provided in section 7 applicable to such employees or to any category of them that it determines;

(3) exempt an employer or a category of employers from any notice or formality in relation to hiring the necessary persons to furnish services the Government deems adequate.

- Collective agreement** The provisions of an order made under subparagraph 1 of the first paragraph shall form part of the collective agreement contemplated by them for such time as is indicated therein.
- Dismissal** **7.** Employees who, on or after the date an order made under subparagraph 2 of the first paragraph of section 6 takes effect, do not comply with section 2 or section 3 may be dismissed without other procedure or formality than the sending of a written notice by the employer to each of the employees dismissed.
- Grounds** The notice shall state that the dismissal is grounded on the fact that the employee has not complied with section 2 or section 3. The sending of this notice creates an exemption from every other requirement to give notice.
- Reinstatement** The employee is entitled to reinstatement only if he proves that he complied with section 2 or section 3, as the case may be, or that he was prevented from complying therewith despite having taken every reasonable means to do so, and that his failure to comply with section 2 or section 3 was not part of any concerted action.
- Dismissal** **8.** An employee who, alone or in concert with others, hinders the access of a person to a place to which that person has a right of access to perform his duties or to receive a service regularly offered by an employer, may be dismissed without other procedure or formality than the sending of a written notice by the employer to each of the employees dismissed.
- Grounds** The notice shall state that the dismissal is grounded on the fact that the employee has hindered the access of a person to a place to which that person has a right of access. The sending of this notice creates an exemption from every other requirement to give notice.
- Arbitration** **9.** Every person to whom a dismissal made by an employer pursuant to section 7 or section 8 is referred for arbitration has authority only to confirm or to quash it.
- Decision** The decision must be based exclusively on the third paragraph of section 7 or, as the case may be, on the proof submitted by the employer of the fact stated in the notice of dismissal provided for in the second paragraph of section 8.
- Indemnity** No indemnity may be granted to an employee whose dismissal has been confirmed.

DIVISION III

SANCTIONS

§ 1.—*Union assessments, union leaves and arbitration costs*

Sanctions

10. If the Government is of opinion that the employees represented by an association of employees are not complying with section 2 or section 3 in sufficient number to ensure that services it deems adequate are provided in a school or college, it may, by order,

(1) order cessation of the obligation to pay any union assessment or contribution or any amount in lieu thereof in respect of the association of employees;

(2) prohibit the employer from withholding any union assessment or contribution or any amount in lieu thereof from the salary of the employees represented by such association;

(3) prohibit an employer from paying a salary to or from conferring any other benefit on an employee released for union activities for the account of such association of employees or of the union, federation, confederation, congress or council to which the association belongs or is affiliated or of which it is a member;

(4) order that the payment of the fees, costs and allowances of the chairman of the court of arbitration be shared equally between the association of employees and the employer.

Applicability of orders

The provisions of an order which regard any matter contemplated in subparagraph 1, 2 or 3 of the first paragraph apply from the date the order is made until the expiry of a period equal to six months per day or part of a day during which the Government considers that the employees have not complied with section 2 or section 3 in sufficient number to ensure that services it deems adequate are provided.

Applicability of orders

The provisions of an order which regard the matters contemplated in subparagraph 4 of the first paragraph apply to any grievance arising from the date the order takes effect until the expiry of a period equal to one year per day or part of a day during which the Government is of opinion that the employees have not complied with section 2 or section 3 in sufficient number to ensure that services it deems adequate are provided.

§ 2.—*Reduction of salary and loss of seniority*

Reduction of salary

11. No employee who is absent from work or ceases to perform his ordinary activities contrary to section 2 or section 3 for a period may be remunerated for that period.

- Reduction of salary** In addition, the salary to be paid to him under the collective agreement applicable for work done after that absence or cessation is reduced by an amount equal to the salary he would have received for each period of absence or cessation if he had complied with section 2 or section 3.
- Deductions** Each employer must make the deductions resulting from the application of the second paragraph, up to 20% of the salary for a pay period. He must make a report of the deductions to the Minister of Education.
- Reimbursement** An employee is entitled to reimbursement of the deducted amount only if he proves that he complied with section 2 or section 3, as the case may be, or that he was prevented from complying therewith despite having taken every reasonable means to do so, and that his failure to comply with section 2 or section 3 was not part of any concerted action.
- Arbitration** Every person to whom a decision taken by an employer pursuant to this section is referred for arbitration has authority only to confirm or quash it on the sole basis of the fourth paragraph.
- Loss of seniority** **12.** From the date determined by order of the Government, every employee who is absent from work or ceases to carry on his ordinary activities contrary to section 2 or section 3 loses three years of seniority for each day or part of a day during which such absence or cessation continues.
- Loss of seniority** If the number of years or of fractions of years of seniority acquired by an employee pursuant to the collective agreement governing him is smaller than the total number of years resulting from the application of the first paragraph, the loss of seniority is equal to the number of years or fractions of years acquired.
- Notification** The employer shall inform the employee of his loss of seniority within forty-five days after his return to work.
- Recourse** An employee is entitled to recognition of the years or fractions of years of seniority he has lost by the effect of the application of this section only if he proves that he complied with section 2 or section 3, as the case may be, or that he was prevented from complying therewith despite having taken every reasonable means to do so, and that his failure to comply with section 2 or section 3 was not part of any concerted action.
- Arbitration** Every person to whom a decision taken by the employer pursuant to this section is referred for arbitration has authority only to confirm or quash it on the sole basis of the fourth paragraph.

§ 3.—*Offences*

Offences and penalties

13. Every person who contravenes or incites or encourages a person to contravene section 2, 3, 4, 11 or 12 or an order made pursuant to section 10 is guilty of an offence and liable, in addition to costs, for each day or part of a day during which the contravention continues, to a fine

(1) of \$50 to \$200 in the case of an employee or other natural person not contemplated in subparagraph 2;

(2) of \$2 000 to \$10 000 in the case of a person who, on 25 January 1983, was an officer, director, employee, agent or adviser of an association of employees, union, federation, confederation, congress or council, or a director, agent or adviser of an employer, or who became so after that date;

(3) of \$10 000 to \$50 000 in the case of an association of employees, union, federation, confederation, congress or council.

Party to the offence

Where a person mentioned in subparagraph 2 of the first paragraph is guilty of an offence, the association of employees, union, federation, confederation, congress or council whereof the person is or has been an officer, director, employee, agent or adviser is guilty of an offence described in the first paragraph is deemed a party to the offence and is liable, in addition to costs, to the fine provided in subparagraph 3 of the said paragraph, for each day or part of a day during which the contravention continues, whether or not the officer, director, employee, agent or adviser has been prosecuted or convicted.

Offence and penalty

14. Every association of employees that contravenes section 5 is guilty of an offence and liable, in addition to costs, to a fine of \$10 000 to \$50 000 for each day or part of a day during which, subject to section 17, employees represented by it contravene section 2 or section 3 while the association has failed to comply with section 5.

Offence and penalty

15. Every union, federation, confederation, congress or council that contravenes section 5 is guilty of an offence and liable, in addition to costs, to a fine of \$10 000 to \$50 000 for each day or part of a day during which, subject to section 17, employees represented by the association of employees that belongs or is affiliated to or is a member of the union, federation, confederation, congress or council contravene section 2 or section 3 while the union, federation, confederation, congress or council has failed to comply with section 5.

Party to the offence

16. Where an association of employees or a union, federation, confederation, congress or council is guilty of an offence described

in section 13, 14 or 15, subject to section 18, where applicable, every person who was an officer, director, employee, agent or adviser thereof on 25 January 1983 or became so thereafter and who participated in the commission of the offence or acquiesced therein is deemed a party to the offence and is liable, for each day or part of a day during which the contravention continues, in addition to costs, to the fine provided in subparagraph 2 of the first paragraph of section 13, whether or not the association, union, federation, confederation, congress or council has been prosecuted or convicted.

§ 4.—*Presumptions*

Presumption **17.** An employee is deemed to have contravened section 2 or, as the case may be, section 3 on any given day upon proof *prima facie* that he did not perform his duties on that day.

Recourse of the employee The presumption may be rebutted by the employee only if he proves that he complied with section 2 or section 3 or that he was prevented from complying therewith despite having taken every reasonable means to do so and that his failure to comply with section 2 or section 3 was not part of any concerted action.

Presumption **18.** Every association of employees and every union, federation, confederation, congress or council to which such association belongs or is affiliated or of which it is a member is deemed to have contravened section 5 on any given day upon proof, subject to section 17, that employees represented by such association of employees have not complied with section 2 or section 3.

Recourse of the association The presumption may be rebutted by the association of employees or the union, federation, confederation, congress or council only if it proves that it took appropriate measures to induce the employees represented by the association of employees to comply with section 2 or section 3, as the case may be.

§ 5.—*Proceedings*

Proceedings **19.** Proceedings for an offence described in sections 13 to 16 are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General or by a person generally or specially authorized by him in writing for that purpose.

Continuous offences **20.** Notwithstanding subsection 2 of section 12 of the Summary Convictions Act, where, pursuant to this Act, an offence is continuous, all the separate offences referred to in subsection 4 of that section may be charged in a single count.

Decision However, a decision concerning an offence does not entail a decision in respect of another offence charged in the same count.

Admissible
proof

21. A judge having jurisdiction in respect of an offence against this Act may admit proof made in a trial relating to an offence against this Act in lieu of proof and its use in another trial relating to an offence against this Act, without any requirement that a witness heard in support of the proof be heard again.

Witnesses

A person against whom this mode of proof is used may, with leave of the judge, summon a witness whose testimony is adduced as proof in order to cross-examine him. The person may be taxed for costs if, in the opinion of the judge, the presence of the witness was inexpedient.

DIVISION IV

GENERAL AND FINAL PROVISIONS

Effect of
order

22. An order made by the Government pursuant to this Act takes effect from the date it is made or any later date fixed therein.

Notice

The Government must promptly give public notice of the order.

Applicability

23. Except in respect of offences already committed, this Act ceases to apply to an association of employees and to the employees represented by it from the date fixed by order of the Government, if the Government is of opinion that that is appropriate, considering an understanding that has been reached between the parties.

Proceedings
continued

24. Penal proceedings instituted by the Attorney General between 25 January and 17 February 1983 before the Labour Court following a contravention of section 107, 142 or 145 of the Labour Code are continued and tried before a justice of the peace and determined by him in accordance with section 3 of the Summary Convictions Act (R.S.Q., chapter P-15) as if they had been instituted in accordance with that Act.

Proceedings

25. Proceedings for an offence described in section 107, 142 or 145 of the Labour Code committed between 25 January and 17 February 1983 are brought in accordance with the Summary Convictions Act by the Attorney General, by a person generally or specially authorized by him in writing for such purpose, by the labour commissioner-general or by an interested party.

Applicable
provisions

26. Sections 57 to 63.19 of the Summary Convictions Act apply, *mutatis mutandis*, to a judgment ordering the payment of a fine following contempt of court by an employee, or by an officer, director, employee, agent or adviser of an association of employees or of a union, federation, confederation, congress or council to which an association of employees belongs or is affiliated or of which it is a member, or by a director, agent or adviser of an employer.

1983

Schools and colleges in the public sector

CHAP. 1

1982, c. 45,
s.2, am.

27. Section 2 of the Act respecting the conditions of employment in the public sector (1982, chapter 45) is amended by replacing the words “five days” in the first line by the words “forty-five days”.

Declaratory
section

This section is declaratory.

Charter of
human rights

28. This Act applies notwithstanding the Charter of human rights and freedoms (R.S.Q., chapter C-12) and notwithstanding any inconsistent provision of any general or special Act, regulation, collective agreement or contract of engagement.

Exception

It shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

Coming into
force

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