



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 10

**An Act to provide for the provisional
relief from office of an elected municipal
officer**

Introduction

**Introduced by
Mr. Sylvain Gaudreault
Minister of Municipal Affairs, Regions and Land
Occupancy**

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EXPLANATORY NOTES

This bill introduces a measure that allows the Superior Court, on a motion by a municipality or any of its electors, to declare provisionally incapable to perform any duty of office a member of the council of the municipality against whom proceedings have been brought for an offence under an Act of the Parliament of Québec or Canada that is punishable by a term of imprisonment of two years or more.

Provisional incapacity may be declared if the court considers it in the public interest in view of the connection between the alleged offence and the council member's duties and the extent to which that offence is likely to discredit the administration of the municipality.

The bill contains rules for the cessation of the provisional incapacity.

It provides that the municipality's obligation to assume the defence costs of a council member and the council member's obligation in certain cases to repay those costs apply when a provisional incapacity motion has been brought against a council member.

A council member found guilty of the offence alleged in the proceedings on which a provisional incapacity motion was based must repay to the municipality any sum received as remuneration, an allowance or compensation for the incapacity period. Moreover, any benefits accrued to the council member under a pension plan will be adjusted to take the incapacity period into account.

Finally, the bill provides that proceedings brought before the date of coming into force of the new measure may serve as the basis for a provisional incapacity motion.

LEGISLATION AMENDED BY THIS BILL:

- Cities and Towns Act (chapter C-19);
- Municipal Code of Québec (chapter C-27.1);

- Act respecting elections and referendums in municipalities (chapter E-2.2);
- Act respecting the Pension Plan of Elected Municipal Officers (chapter R-9.3).

Bill 10

AN ACT TO PROVIDE FOR THE PROVISIONAL RELIEF FROM OFFICE OF AN ELECTED MUNICIPAL OFFICER

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CITIES AND TOWNS ACT

1. Section 604.6 of the Cities and Towns Act (chapter C-19) is amended by adding the following subparagraph after subparagraph 2 of the first paragraph:

“(3) assume the defence of a member of the council against whom a motion has been brought under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2).”

2. Section 604.7 of the Act is amended by adding the following paragraph after the third paragraph:

“In the case provided for in subparagraph 3 of the first paragraph of section 604.6, the allegation and the conviction considered for the purposes of this section are those relating to the proceedings on which the motion referred to in section 312.1 of the Act respecting elections and referendums in municipalities is based.”

MUNICIPAL CODE OF QUÉBEC

3. Article 711.19.1 of the Municipal Code of Québec (chapter C-27.1) is amended by adding the following subparagraph after subparagraph 2 of the first paragraph:

“(3) assume the defence of a member of the council against whom a motion has been brought under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2).”

4. Article 711.19.2 of the Code is amended by adding the following paragraph after the third paragraph:

“In the case provided for in subparagraph 3 of the first paragraph of article 711.19.1, the allegation and the conviction considered for the purposes of this section are those relating to the proceedings on which the motion referred to in section 312.1 of the Act respecting elections and referendums in municipalities is based.”

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

5. The Act respecting elections and referendums in municipalities (chapter E-2.2) is amended by adding the following after section 312:

“CHAPTER IX.1

“PROVISIONAL INCAPACITY

“312.1. The Superior Court may, on a motion, if it considers it warranted in the public interest, declare provisionally incapable to perform any duty of office a member of the council of a municipality against whom proceedings have been brought for an offence under an Act of the Parliament of Québec or Canada that is punishable by a term of imprisonment of two years or more.

The motion may be brought by the municipality or any of its electors. It is heard and decided by preference.

To assess whether it is warranted in the public interest, the court considers the connection between the alleged offence and the council member’s duties and the extent to which the alleged offence is likely to discredit the administration of the municipality.

“312.2. The court may not declare the council member provisionally incapable if the motion is based on proceedings brought before the polling day for the most recent election in which the council member was declared elected or, as applicable, before the day on which the council member was declared elected under section 168 in that election.

“312.3. No appeal lies from the judgment.

“312.4. The provisional incapacity ceases on the first of the following dates:

(1) the date on which the prosecutor stays or withdraws all charges in the proceedings on which the motion was based;

(2) the date on which a judgment of acquittal or a stay of proceedings in respect of all such charges becomes final; and

(3) the date on which the council member’s term that was in progress on the date of the judgment ends in accordance with the provisions of this Act.

However, for the purposes of subparagraph 3 of the first paragraph, the date on which the provisional incapacity ceases is the date of the end of the term that follows the term during which the judgment was rendered if it was rendered

before the day on which the council member took the oath of office following his most recent election.

“312.5. If found guilty, by a judgment that has become final, of the offence alleged in the proceedings on which the motion was based, the council member must repay to the municipality any sum received from the municipality as remuneration, an allowance or compensation under the Act respecting the remuneration of elected municipal officers (chapter T-11.001) for the period during which he was forced to cease performing any duty of office.

The first paragraph also applies, with the necessary modifications, to any sum the council member received, as remuneration, an allowance or compensation, from a mandatory body of the municipality or a supramunicipal body within the meaning of section 2 of the Act respecting the remuneration of elected municipal officers.”

6. Section 317 of the Act is amended by adding “or by reason of the existence of a judgment declaring him provisionally incapable under section 312.1” at the end of the fourth paragraph.

ACT RESPECTING THE PENSION PLAN OF ELECTED MUNICIPAL OFFICERS

7. The Act respecting the Pension Plan of Elected Municipal Officers (chapter R-9.3) is amended by inserting the following after the heading of Chapter XII:

“DIVISION 0.1

“MISCELLANEOUS PROVISIONS

“76.7. Despite any provision to the contrary in this Act or in any of the supplementary benefits plans established under sections 76.4 and 80.1, a council member who, by a judgment that has become final, was found guilty of an offence alleged in proceedings that served as a basis for a motion referred to in section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2) is deemed not to have participated in this plan during the period the council member was forced, in accordance with the judgment rendered under that section, to cease performing any duty of office. That period cannot be credited for the purposes of this plan.

The pension of the council member is recomputed, if necessary, as a result of the application of the first paragraph. Despite section 147.0.1 of the Act respecting the Government and Public Employees Retirement Plan (chapter R-10), the Commission may, not later than the date occurring 24 months after the date on which the judgment became final, adjust downwards the amount of a pension already in payment in order to take the application of the first paragraph into account.”

MISCELLANEOUS AND FINAL PROVISIONS

8. Proceedings brought before this Act comes into force may serve as a basis for a motion under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2), enacted by section 5.

9. This Act comes into force on (*insert the date of assent to this Act*).