

Bill 26

**An Act to ensure mainly the recovery of
amounts obtained as a result of fraud or
fraudulent tactics in connection with
public contracts**

Section 1

AMENDMENT:

Replace "obtained" by paid".

Adopte
M.P.

Bill 26

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Section 3

AMENDMENT:

Replace "obtained" by "improperly paid".

Adopté
M.P.

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Section 5

AMENDMENT:

Replace the second paragraph by:

A public body may, however, in the cases, on the conditions and in the manner determined by the Minister, intervene within the scope of the program, in particular by participating in a vote of all the public bodies covered by a settlement proposal made by an enterprise or natural person mentioned in section 10.

Adopté
M.A.

Bill 26

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Section 10

AMENDMENT:

Replace “has committed fraud or engaged in fraudulent tactics” in the first paragraph by “has, in any capacity, participated in fraud or fraudulent tactics”.

Adopted
MP.

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Section 10

AMENDMENT:

1. Strike out the second sentence of the second paragraph.
2. Add after the second paragraph:

The directors of the enterprise in office at the time the fraud or fraudulent tactics occurred are also held liable if it is established that they knew or ought to have known that fraud or fraudulent tactics were committed in relation to the contract concerned, unless they prove that they acted with the care, diligence and skill that a prudent person would have exercised in similar circumstances.

Adopte
MP.

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Section 11

AMENDMENT:

Replace “Any amount claimed under this section bears interest from the date of the final payment made” in the third paragraph by “Any amount granted by the court under this section bears interest from the date the work is accepted”.

*Adopte
MO.*

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Section 11

AMENDMENT:

Replace "15%" in the first paragraph by "20%".

Adopté
M.P.

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Section 18

AMENDMENT:

Replace by:

18. The Minister must, within six months after the end of the reimbursement program described in Chapter II, report to the Government on the implementation of the program. The report must include the names of the enterprises or natural persons mentioned in section 10 who participated in the program, the names of the public bodies involved, and the total amount reimbursed.

The report is tabled within the next 30 days in the National Assembly or, if the Assembly is not sitting, within 30 days of resumption.

Adopté
ME.

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Section 16

AMENDMENT:

Insert after the second paragraph:

In addition, during a proceeding, no measure necessary or useful to preserve the public body's rights, including an unenforceability action, may be dismissed on the grounds that the right is prescribed or extinguished.

Adopté
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Section 19

AMENDMENT:

Replace “taking into account the losses sustained by the public body” by “in proportion to the amounts paid by the public body for a particular contract”.

*Adopte
MP.*

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Section 20.1

AMENDMENT:

Insert after section 20:

20.1. No recourse in warranty or recursory action may be brought against an enterprise or natural person mentioned in section 10 who has been granted a discharge for a claim arising from a contract described in section 3.

Adopte
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Section 21

AMENDMENT:

Strike out the second paragraph.

Adopte
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Section 25.1

AMENDMENT:

Insert after the heading of Chapter VI:

BUILDING ACT

25.1. The Building Act (chapter B-1.1) is amended by inserting the following sections after section 65.1:

“65.1.0.1. Section 65.1 does not apply if

(1) the offence or indictable offence that led to the conviction has already been considered by the Autorité des marchés financiers (the Authority) under Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1) and, when it was considered, an authorization was granted to the licence holder or the authorization held by the licence holder was not revoked or was renewed; or

(2) the conviction and the offence or indictable offence that led to it have not yet been considered by the Authority in connection with an application submitted to it under Chapter V.2 of the Act respecting contracting by public bodies and currently under examination, or following an advisory opinion provided under section 21.32 of that Act.

The Authority must send the Board the information required for the purposes of the first paragraph.

“65.1.0.2. The holder of a restricted licence may at any time file an application for authorization with the Authority as provided for in Chapter V.2 of the Act respecting contracting by public bodies.

The granting by the Authority of such an authorization entails, despite any inconsistent provision, the removal of the restriction on the licence.”

Adapté
MP.

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Section 26

AMENDMENT:

Replace the introductory clause of proposed section 21.2.0.1 by:

“21.2.0.1. No entry may be made under section 21.1 or the first paragraph of section 21.2 in the register provided for in section 21.6 if”.

Adopté
M.P.

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Section 27

AMENDMENT:

Replace by:

27. Section 21.26 of the Act is amended, in the first paragraph,

(1) by striking out subparagraph 1;

(2) by replacing “holding 50% or more of the voting rights attached to the shares that may be exercised under any circumstances” in subparagraph 2 by “is a natural person who holds 50% or more of the voting rights attached to the shares that may be exercised under any circumstances and who”;

(3) by striking out subparagraphs 4 to 7.

*Adopte
ME.*

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Section 29

AMENDMENT:

1. Insert “at any time” after “may” in the first paragraph of proposed section 58.2.
2. Add at the end:

The Authority must send the Chair of the Conseil du trésor the information required for the purposes of this section.”

*Adopté
ME.*

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Sections 29.1 to 29.7

AMENDMENT:

Insert after section 29:

29.1. Schedule I to the Act is amended by inserting the following in the alphanumerical order of the Acts and regulations concerned:

"Act respecting elections and referendums in municipalities (chapter E-2.2)	610 (2)	Making an illegal contribution referred to in paragraph 1 of section 610
	610 (3)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	610 (4)	Making a false declaration concerning a contribution
	610.1 (2)	Making an illegal gift of money referred to in paragraph 1 of section 610.1
Act respecting school elections (chapter E-2.3)	219.8 (2)	Making an illegal contribution referred to in paragraph 1 of section 219.8
	219.8 (3)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	219.8 (4)	Making a false declaration concerning a contribution
Election Act (chapter E-3.3)	564.1 (1)	Making a false declaration concerning a contribution
	564.1 (2)	Inciting an elector to make a contribution by

using threats or coercion or by promising compensation, consideration or a reimbursement

564.2 Contravening section 87 – contribution made by a person who is not an elector, contribution made in favour of an unauthorized entity or contribution not in accordance with Division II of Chapter II of Title III

Contravening section 90 – involuntary contribution of an elector, contribution not made out of the elector’s property or contribution made with compensation or for consideration or a reimbursement

Contravening section 91 – contribution exceeding the maximum amount allowed

Contravening the first paragraph of section 127.7 – contribution made by a person who is not an elector

Contravening the third paragraph of section 127.7 – contribution exceeding the maximum amount allowed

Contravening the first paragraph of section 127.8 with regard to section 90 - involuntary contribution of an elector, contribution not made out of the elector’s property or contribution made with compensation or for consideration or a reimbursement”.

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

29.2. The Act respecting elections and referendums in municipalities (chapter E-2.2) is amended by striking out sections 641.2 to 641.5.

29.3. The Act is amended by inserting the following section after section 648:

“648.1. The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this Title and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences described in this Title and listed in Schedule I to that Act.”

ACT RESPECTING SCHOOL ELECTIONS

29.4. The Act respecting school elections (chapter E-2.3) is amended by striking out sections 221.1.2 to 221.1.5.

29.5. The Act is amended by inserting the following section after section 223.4:

“223.5. The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this chapter and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences under this chapter that are listed in Schedule I to that Act.”

ELECTION ACT

29.6. The Election Act (chapter E-3.3) is amended by striking out sections 564.3 to 564.6.

29.7. The Act is amended by inserting the following section after section 569:

“569.1. The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this

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Title and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences under this Title that are listed in Schedule I to that Act.”

Adopté
MP.

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Section 35.1

AMENDMENT:

Insert after section 35:

35.1. Persons and partnerships who are contractors within the meaning of section 1 of the Act respecting contracting by public bodies (chapter C-65.1) and are entered in the register kept by the Chief Electoral Officer with respect to persons and partnerships referred to in the first and second paragraphs of section 641.2 of the Act respecting elections and referendums in municipalities (chapter E-2.2), of section 221.1.2 of the Act respecting school elections (chapter E-2.3) or of section 564.3 of the Election Act (chapter E-3.3) are, despite any provision to the contrary and for the remaining period of ineligibility applicable under those Acts, named in the register of enterprises ineligible for public contracts established under section 21.6 of the Act respecting contracting by public bodies.

For the purposes of the first paragraph, the Chair of the Conseil du trésor enters in the register of enterprises ineligible for public contracts for each person and partnership concerned the relevant information from among that required under the first paragraph of section 641.4 of the Act respecting elections and referendums in municipalities, of section 221.1.4 of the Act respecting school elections or of section 564.5 of the Election Act, as applicable.

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Section 16.1

AMENDMENT:

Insert after section 16:

16.1. A court of justice has exclusive jurisdiction to hear applications brought under this chapter. However, persons or bodies exercising adjudicative functions retain their authority with respect to any such application made by a public body exclusively against one of its employees. In such a case, this Act applies with the necessary modifications.

Adopted
MP.

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Section 7

AMENDMENT:

Replace by:

7. Anything said or written within the framework of the program is confidential and may not be admitted in evidence unless the Minister and the enterprise or natural person mentioned in section 10 agree otherwise.

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Section 8

AMENDMENT:

Replace by:

8. The program director, the Minister and the enterprise or natural person mentioned in section 10 cannot be compelled to disclose anything they hear or learn within the framework of the program. Nor can they be compelled to produce a document prepared or obtained within that framework before a court of justice, before a person or body of the administrative branch exercising adjudicative functions or before any other person or body having the power to summon witnesses, gather evidence and require the production of documents.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person may have access to such a document.

Adopté
ME.

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Section 20.2

AMENDMENT:

Insert after section 20.1:

20.2. Despite any inconsistent provision of an Act, any value accrued or any benefit paid or granted to an employee of a public body or to an elected officer under a pension plan is seizable for the execution of a final judgment in an action brought under Chapter III, in the cases, on the conditions and in the manner determined by government regulation.

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Section 33

AMENDMENT:

Replace everything after “chambers,” in the second paragraph by “who grants the stay if the enterprise or natural person mentioned in section 10 undertakes to participate in the reimbursement program described in Chapter II or if the public body states that it intends to continue the matter under the rules set out in Chapter III when they come into force.”

Adopté
M.C.

Bill 26

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Title

Replace "obtained" by "improperly paid".

Adopte
MP.