



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 127

An Act to ensure the continuity of the provision of legal services within the Government and to allow continued negotiation and the renewal of the collective agreement of the employees who provide those legal services

Introduction

**Introduced by
Mr. Pierre Moreau
Minister responsible for Government Administration and
Ongoing Program Review and Chair of the Conseil du
trésor**

**Québec Official Publisher
2017**

EXPLANATORY NOTES

The purpose of this bill is to ensure the continuity of the provision of legal services within the Government. The bill also provides for continued negotiation of the collective agreement of the employees whose functions consist in providing such services. In the event that no agreement is reached, it provides for the content of the collective agreement.

To that end, the bill provides, among other things, that the advocates and notaries appointed in accordance with the Public Service Act and represented by Les avocats et notaires de l'État québécois are required to cease participating in the current strike and resume work according to their normal work schedule and other applicable conditions of employment.

The bill also provides for a negotiation mechanism allowing, first, continued negotiation with the possibility of appointing a conciliator and, second, a mediation process if necessary.

The bill provides for the renewal of the collective agreement binding the advocates and notaries which expired on 31 March 2015, either according to the agreement reached by the parties during the continued negotiation or, in the event that no agreement is reached, by making certain modifications to the collective agreement, in particular to increase the salary scale.

Lastly, administrative, civil and penal provisions are included to secure the continuity of the provision of the legal services concerned.

Bill 127

AN ACT TO ENSURE THE CONTINUITY OF THE PROVISION OF LEGAL SERVICES WITHIN THE GOVERNMENT AND TO ALLOW CONTINUED NEGOTIATION AND THE RENEWAL OF THE COLLECTIVE AGREEMENT OF THE EMPLOYEES WHO PROVIDE THOSE LEGAL SERVICES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

PURPOSE AND SCOPE

1. The purpose of this Act is to ensure the continuity of the provision of legal services within the Government. The Act also provides for continued negotiation of the collective agreement of the employees whose functions consist in providing such services. In the event that no agreement is reached, it provides for the content of the collective agreement.

2. In this Act,

“association” means Les avocats et notaires de l’État québécois, the association which succeeded the Association des juristes de l’État pursuant to a decision of the Commission des relations du travail dated 23 November 2015 and which is certified under sections 66 and 67 of the Public Service Act (chapter F-3.1.1), as well as any association that succeeds it;

“employee” means an advocate or notary appointed in accordance with the Public Service Act who is represented by the association on (*insert the date of coming into force of this Act*) or begins to be represented by the association after that date; and

“public body” means a government department or a body in respect of which the association is certified under sections 66 and 67 of the Public Service Act.

DIVISION II

CONTINUITY OF SERVICES

3. All employees must, as of 8:30 a.m. on Wednesday, 1 March 2017, cease participating in the current strike and resume work according to their normal work schedule and other applicable conditions of employment.

All employees must, as of that time, fulfil the duties attached to their respective functions and perform all their professional or administrative activities, according to the conditions of employment contained in the collective agreement between the association and the Government which expired on 31 March 2015.

4. Employees are prohibited from participating in any concerted action which involves a stoppage, slowdown, reduction or degradation of the duties attached to their respective functions or of their professional or administrative activities, or the effect of which is to prevent, hinder or reduce the provision of legal services or to delay penal, civil or administrative proceedings.

5. All public bodies, their officers and their representatives must, as of 8:30 a.m. on Wednesday, 1 March 2017, take the appropriate measures to ensure that legal services are provided by the employees.

6. The association is prohibited from calling or continuing a strike or participating in any concerted action if the strike or concerted action involves a contravention by employees of section 3 or section 4.

Similarly, a lock-out is prohibited if it involves such a contravention.

7. The association must take the appropriate measures to induce the employees it represents to comply with section 3 and not contravene sections 4, 8 and 9.

8. No one may, by omission or otherwise, in any manner prevent or impede the fulfilment of the duties attached to an employee's functions, the provision of legal services by an employee or the performance by an employee of his or her work or of his or her professional or administrative activities, or directly or indirectly contribute to slowing down or delaying the performance of such work or activities.

9. No one may hinder a person's access to a place if the person is authorized or has a duty to be there and if the place is a place where an employee must exercise his or her functions.

DIVISION III

ADMINISTRATIVE AND CIVIL MEASURES

§1.— Union assessments and dues

10. On noting that its employees are not complying with section 3 or section 4 in sufficient number to ensure that its services are provided, a public body must suspend withholding any union assessment or dues or amount in lieu thereof from the salary of each of the employees represented by the association.

The suspension is effective for a period equal to 12 weeks per day or part of a day during which it is noted by the public body that its employees are not complying with section 3 or section 4 in sufficient number to ensure that its services are provided.

11. Despite any clause of the applicable collective agreement, employees are not required to pay any assessment, dues, contribution or other amount in lieu thereof to the association or to a third party for the benefit of the association for the duration of the suspension under section 10.

§2.—*Remuneration of employees*

12. No public body may remunerate an employee who contravenes section 3 or section 4 for the period during which the contravention occurred.

In addition, if the contravention consists in absence from work or participation in a work stoppage, the salary to be paid to the employee under the collective agreement for work performed after the absence or work stoppage is reduced by an amount equal to the salary the employee would have received for each period of absence or work stoppage.

A public body must make the deductions resulting from the application of the second paragraph up to 20% of the salary per pay period and pay the sums deducted to a registered charity within the meaning of the Taxation Act (chapter I-3) designated by order of the Government.

13. Any disagreement as to the application of section 12 is to be dealt with according to the grievance settlement procedure.

An employee is entitled to reimbursement of the amount withheld but only on showing that he or she complied with section 3 or section 4, as applicable, or was prevented from complying with that section despite having taken all reasonable means to do so and that the failure to comply with section 3 or section 4 was not part of any concerted action.

A person to whom a decision of a public body under this section is referred for arbitration may only confirm or quash the decision, and may do so only on the basis of the second paragraph.

§3.—*Employees released to carry on union activities*

14. No public body may remunerate an employee released to carry on union activities for a day or part of a day during which the association contravenes section 6.

In addition, the salary to be paid to the employee under the collective agreement for work performed after the association's contravention is reduced by an amount equal to the amount that would have been paid to the employee had the contravention not occurred.

On noting a contravention referred to in the first paragraph by the association, a public body must make the deductions resulting from the application of the second paragraph up to 20% of the salary per pay period and pay the sums deducted to a registered charity within the meaning of the Taxation Act designated by order of the Government.

15. Any disagreement as to the application of section 14 is to be dealt with according to the grievance settlement procedure.

An employee is entitled to reimbursement of the amount withheld but only on showing that he or she did not participate in the activities of the association that are related to the contravention.

A person to whom a decision of a public body under this section is referred for arbitration may only confirm or quash the decision, and may do so only on the basis of the second paragraph.

16. On noting that the association has engaged in an act described in section 6, a public body must, after giving notice to the association, suspend, for the period determined under the third paragraph, paying the salary of any employee released during that period to carry on union activities for the association, for the time during which the employee is released.

The first paragraph also applies if it is noted by a public body that the employees are not complying with section 3 or section 4 in sufficient number to ensure that its services are provided.

The suspension prescribed by this section is effective for a period equal to 12 weeks per day or part of a day during which the circumstances described in the first or second paragraph are noted by the public body.

§4.— *Work reorganization*

17. If the employees of a public body do not comply with section 3 or section 4 in sufficient number to ensure that services are provided, the Government may, by order, from the date, for the period and on the conditions it specifies and exclusively for the purpose of ensuring the provision of the public body's services, replace, amend or strike out any clause of the collective agreement between the public body and the association in order to provide for the manner in which the public body is to fill a position, hire new employees and handle any matter related to work organization.

§5.— *Civil liability*

18. The association is liable for any injury caused during a contravention of section 3 or section 4 by employees it represents unless it proves that the injury is not a result of the contravention or that the contravention is not part of any concerted action.

19. A person who suffers injury because of an act in contravention of section 3 or section 4 may apply to the competent court to obtain compensation.

Despite article 575 of the Code of Civil Procedure (chapter C-25.01), if a person who suffered such injury brings a class action under Book VI of that Code by way of a motion in accordance with the second paragraph of article 574 of that Code, the court authorizes the bringing of the class action if it is of the opinion that the person to whom the court intends to ascribe the status of representative is in a position to adequately represent the members of the group described in the motion.

DIVISION IV

MECHANISM FOR THE NEGOTIATION AND RENEWAL OF THE EMPLOYEES' COLLECTIVE AGREEMENT

§1.—*Continued negotiation*

20. The association and the employer must, as of the date of coming into force of this Act, continue negotiating diligently and in good faith, for a maximum period of 45 days, with a view to reaching an agreement.

21. The Minister of Labour may, only once and at the joint request of the association and the employer, extend the negotiation period provided for in section 20. The duration of the extension is determined by the Minister of Labour and may not exceed 15 days.

22. The association or the employer may, at any time during the 45-day period or the extension granted under section 21, ask the Minister of Labour to appoint a conciliator.

23. At the expiry of the 45-day period or of the extension granted under section 21, the association and the employer must, with the assistance of the conciliator, if applicable, draw up a list of all the matters on which they agree.

If the association and the employer continue to disagree on certain matters, the association and the employer must each prepare a list of those matters and of their most recent proposal for each. Each party must send its list to the other party within five days.

§2.—*Mediation process*

24. Within five days after receiving the lists mentioned in section 23, the association and the employer must agree on the choice of a mediator, to be appointed by the Minister of Labour. If they fail to agree, the Minister of Labour appoints a mediator, after consulting the association and the employer, within 15 days after receiving the lists mentioned in section 23.

25. The mediator appointed by the Minister of Labour must

(1) have recognized experience in the field of labour relations; and

(2) not be or have been an employee, officer, representative or member of the association or the Government in the seven years preceding his or her appointment.

26. The mediator's remuneration and expenses must, failing agreement between the association and the employer, be set by the Minister of Labour. They are to be borne equally by the association and the employer.

27. The mediator must attempt to bring the association and the employer to an agreement within 30 days after the mediator's appointment. The Minister of Labour may, only once and at the mediator's request, extend that 30-day period. The duration of the extension is determined by the Minister of Labour and may not exceed 15 days.

28. The mediation process concerns the employees' conditions of employment. However, any direct or indirect modification of the negotiation process applicable to the employees is deemed not to constitute such a condition of employment.

29. The mediator may, at any time during the mediation process, make proposals of an exploratory and confidential nature if the mediator considers them fair and useful and is of the opinion that such proposals are likely to foster settlement of the dispute concerning one or more conditions of employment.

30. Any verbal or written information gathered by the mediator must remain confidential. In addition to the report the mediator sends to the Minister of Labour, the mediator may not disclose or be compelled to disclose anything revealed to or learned by the mediator in the performance of mediation duties, or to produce before a court or before any body or person exercising judicial or quasi-judicial functions any document made or obtained in the performance of mediation duties, except in penal matters, in cases where the court considers that such proof is necessary for a full and complete defence. Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to any such document.

31. The mediator must take into account the following factors in formulating proposals:

(1) the remuneration policy and the latest increases granted by the Government to public and parapublic sector employees;

(2) the conditions of employment applicable to the other employees of the Government;

- (3) the functions exercised by the employees; and
- (4) attraction and retention of employees.

32. The mediator has all the powers necessary to carry out his or her mandate and for that purpose may, among other things and if he or she considers it necessary,

(1) meet the association or the employer individually on a confidential basis; and

(2) terminate the mediation process before either deadline mentioned in section 27 if he or she is of the opinion that it is impossible to reconcile the association's and the employer's positions.

33. The association and the employer are required to participate in all meetings called by the mediator.

34. If there is no agreement at the expiry of the mediation period, the mediator must give the association and the employer a report specifying the matters on which there has been agreement, including the matters on which there has been agreement under section 23, and the matters which are still in dispute.

For each matter on which there has been agreement, the mediator must include in his or her report the complete text of all the provisions agreed on by the association and the employer as being the provisions that must be integrated into the collective agreement.

35. The mediator must give a copy of the report to the association, the employer and the Minister of Labour within seven days after the expiry of the mediation period or of the extension granted under section 27 or within seven days after the mediator's decision to terminate the mediation process under paragraph 2 of section 32.

36. The mediator's report must be made public by the Minister of Labour not later than 10 days after it is received.

37. If the association and the employer agree on any of the employees' conditions of employment before the mediator's report is made public, they must immediately notify the mediator.

The mediator must produce an amended report within five days after being notified of the agreement. Only that report is made public by the Minister of Labour, not later than 10 days after it is received.

§3.—Renewal of the collective agreement

38. If the association and the employer enter into an agreement on the collective agreement as a whole and the association's members ratify the agreement within five days after it is entered into, the collective agreement between the association and the employer which expired on 31 March 2015 is renewed according to the terms of the agreement entered into.

39. Failing such an agreement and its ratification by the association's members, the collective agreement which expired on 31 March 2015 is renewed as of the day the Minister of Labour makes public the mediator's report in accordance with section 36 or 37 and, with the necessary modifications, binds the parties until 31 March 2020.

That collective agreement is modified to give effect to the provisions of the schedule and the provisions agreed on by the association and the employer according to the complete text included in the mediator's report under section 34 or 37, the latter provisions prevailing over any conflicting provisions.

DIVISION V

PENAL PROVISIONS

40. Whoever contravenes section 3, 4, 5, 8 or 9 is guilty of an offence and is liable, for each day or part of a day during which the contravention continues, to a fine of

(1) \$100 to \$500 if the offender is an employee or a natural person other than a person referred to in paragraph 2;

(2) \$7,000 to \$35,000 if the offender is an officer, employee or representative of the association or an officer of a public body; and

(3) \$25,000 to \$125,000 if the offender is the association or a public body.

41. If the association contravenes the first paragraph of section 6, it is guilty of an offence and is liable to the fine prescribed by paragraph 3 of section 40 for each day or part of a day during which the contravention continues.

The same holds for a public body that does not comply with the second paragraph of section 6.

42. If the association contravenes section 7, it is guilty of an offence and is liable to the fine prescribed by paragraph 3 of section 40 for each day or part of a day during which a contravention of section 3 or section 4 continues.

43. A person who helps or, by encouragement, advice, consent, authorization or command, induces another person to commit an offence under this Act is guilty of an offence.

A person found guilty under this section is liable to the same penalty as that prescribed for the offence the person helped or induced another person to commit.

DIVISION VI

FINAL PROVISIONS

44. The collective agreement as renewed in accordance with section 38 or 39 is deemed to be a collective agreement within the meaning of the Labour Code (chapter C-27) and produces the same effects. Despite section 72 of that Code, it need not be filed with the minister responsible for the administration of that Code in order to take effect.

45. The taking of an administrative measure or bringing of penal proceedings under any of sections 10 to 16 and 40 to 43 with respect to a person or public body referred to in that section precludes the taking of a measure or bringing of proceedings with respect to the person or public body under a similar provision of the Labour Code on the same grounds.

46. The minister who is Chair of the Conseil du trésor is responsible for the administration of this Act.

47. Division II ceases to have effect on 31 March 2020 or any earlier date set by the Government.

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

SCHEDULE

(Section 39)

MODIFICATIONS TO THE CONDITIONS OF EMPLOYMENT STIPULATED IN THE COLLECTIVE AGREEMENT BETWEEN THE GOVERNMENT AND THE ASSOCIATION WHICH EXPIRED ON 31 MARCH 2015

1. The salary scale for employees in force on the 31 March preceding each period specified below are increased by the following percentages:

- (1) for the period from 1 April 2015 to 31 March 2016, 0%;
- (2) for the period from 1 April 2016 to 31 March 2017, 1.5%;
- (3) for the period from 1 April 2017 to 31 March 2018, 1.75%;
- (4) for the period from 1 April 2018 to 31 March 2019, 2%; and
- (5) for the period from 1 April 2019 to 31 March 2020, 0%.

2. If applicable, the employees' bonuses and allowances in force on the 31 March preceding each period specified in paragraph 1 are increased by the same percentages for the same periods.

"Bonuses and allowances" does not include amounts paid to cover expenses, such as allowances for meals or travel.

Bonuses and allowances expressed as a percentage of salary and in force on the 31 March preceding each period specified in paragraph 1 may not be increased for those periods.

3. Employees are entitled to an amount corresponding to \$0.30 for each hour remunerated between 1 April 2015 and 31 March 2016. That amount is not included in the basic salary.

4. Employees are entitled to an amount corresponding to \$0.16 for each hour remunerated between 1 April 2019 and 31 March 2020. That amount is not included in the basic salary.