



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 45

An Act to amend various legislative provisions concerning health

Introduction

**Introduced by
Mr. Philippe Couillard
Minister of Health and Social Services**

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EXPLANATORY NOTES

This bill introduces a plan to compensate victims of products distributed by Héma-Québec, regardless of liability.

The bill provides for the establishment of public health ethics committee by the Institut national de santé publique du Québec and broadens the government plan to protect the public against disease to cover all vector-borne diseases, including the West Nile virus. The bill also specifies that the Minister of Health and Social Services may collect certain information from public health directors in a form that ensures anonymity, to enable public health authorities to exercise their monitoring activities.

Finally, the bill amends the Act respecting health services and social services to clarify certain provisions relating to the use of information for the purpose of requesting gifts, the complaints examination procedure, in-patients' committees, the audit of the books and accounts of health and social services agencies, and the amalgamation of private institutions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., chapter H-1.1);
- Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2);
- Public Health Act (R.S.Q., chapter S-2.2);
- Act respecting health services and social services (R.S.Q., chapter S-4.2).

Bill 45

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING HEALTH

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING HÉMA-QUÉBEC AND THE HAEMOVIGILANCE
COMMITTEE

1. The Act respecting Héma-Québec and the haemovigilance committee (R.S.Q., chapter H-1.1) is amended by inserting the following chapter after section 54:

“CHAPTER II.1

“COMPENSATION FOR VICTIMS OF A HÉMA-QUÉBEC PRODUCT

“**54.1.** In this chapter, unless the context indicates otherwise,

“bodily injury” means any physical or mental injury suffered by a victim, including death but excepting any adverse effects determined by regulation;

“victim” means a person who received a Héma-Québec product through a transfusion or graft, a person who contracted a disease from a person who received a product distributed by Héma-Québec, or a foetus of either of such persons or, if death occurs, the person who is entitled to a death benefit.

“**54.2.** The Minister must compensate, regardless of liability, a victim of bodily injury caused by a defect in or contamination, by known or unknown pathogens, of a product distributed by Héma-Québec.

The medical act leading to the injury must have taken place in Québec.

“**54.3.** The rules prescribed in the Automobile Insurance Act (chapter A-25) and its regulations apply to the computation of the compensation, with the necessary modifications.

“**54.4.** Entitlement to compensation is prescribed three years after the date on which the injury becomes apparent.

However, if an injury becomes apparent gradually, the time limit runs from the day the injury first becomes apparent.

“54.5. Compensation under this chapter stands in lieu of all rights and remedies against Héma-Québec by reason of bodily injury.

The victim may, however, institute civil proceedings against any other person that is liable for the bodily injury.

“54.6. The Minister is subrogated by operation of law to the rights and actions of the victim against the person liable for the bodily injury up to the amount of compensation paid by the Minister or of the capital representing the pension to be paid by the Minister.

“54.7. A claimant who believes he or she has been wronged by a decision of the Minister under section 54.2 or 54.3 may, within 60 days of the date of notification of the decision, contest the decision before the Administrative Tribunal of Québec.

“54.8. A proceeding before the Administrative Tribunal of Québec does not suspend the payment of compensation paid as a pension.

[[**“54.9.** The sums necessary for the purposes of this chapter are taken out of the consolidated revenue fund.]]

“54.10. If, as a result of bodily injury caused by a product distributed by Héma-Québec, a person is entitled to both compensation under this chapter and a benefit, advantage or compensation under the Act respecting industrial accidents and occupational diseases (chapter A-3.001), the Automobile Insurance Act (chapter A-25), the Act to promote good citizenship (chapter C-20), the Crime Victims Compensation Act (chapter I-6) or the Public Health Act (chapter S-2.2), the person may elect to take advantage of the compensation provided for in this chapter or to claim the other benefit, advantage or compensation.

A person who chooses to be compensated under the Act respecting industrial accidents and occupational diseases, the Automobile Insurance Act, the Act to promote good citizenship, the Crime Victims Compensation Act or the Public Health Act loses all rights to compensation under this chapter.

“54.11. The Government must, by regulation,

(1) determine the conditions that must be met by a person claiming compensation under this chapter; and

(2) determine which adverse effects are not bodily injuries.

“54.12. This chapter applies to victims who received Héma-Québec products after 28 September 1998. However, a victim whose right of recourse is prescribed when this section comes into force is not entitled to the compensation provided for in section 54.2.”

ACT RESPECTING INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC

2. The Act respecting Institut national de santé publique du Québec (R.S.Q., chapter I-13.1.1) is amended by inserting the following sections after section 19:

“**19.1.** The institute is to establish a public health ethics committee.

“**19.2.** The main function of the ethics committee is to give its opinion on the ethical aspect of the proposed surveillance plans and the proposed surveys on health and social issues drawn up under the Public Health Act (chapter S-2.2) and submitted to it by the Minister and public health directors.

The committee may, in particular, give its opinion on

(1) the object of ongoing surveillance and the indicators or health determinants selected for a surveillance plan or a survey; and

(2) the type of information it will be necessary to collect, the sources of information to be used and the analytic study envisaged.

“**19.3.** The ethics committee may also give its opinion on any ethical question that may arise in the application of the Public Health Act, in particular, on the activities or actions provided for in the national public health program or in regional or local public health action plans.

“**19.4.** The composition and the operating procedures of the ethics committee are determined by the institute.

The committee, however, must include

(1) one ethicist;

(2) two representatives of the general public who have no professional ties to the health and social services system;

(3) one public health director; and

(4) one professional practising in a health and social services institution.”

ACT RESPECTING MEDICAL LABORATORIES, ORGAN, TISSUE, GAMETE AND EMBRYO CONSERVATION, AND THE DISPOSAL OF HUMAN BODIES

3. Division IV.1 of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2), comprising sections 24.1 to 24.6, is repealed.

PUBLIC HEALTH ACT

4. Chapter III of the Public Health Act (R.S.Q., chapter S-2.2), comprising sections 19 to 32, is replaced by the following chapter:

“CHAPTER III

“INFORMATION REQUIRED TO ENGAGE IN PUBLIC HEALTH MONITORING ACTIVITIES

“**19.** The Minister may require from public health directors the information necessary for public health authorities to engage in public health monitoring activities. The information is to be provided in a form that ensures anonymity.

“**20.** Section 52 applies to this chapter, with the necessary modifications.”

5. Section 36 of the Act is amended by replacing “ethics committee” in the first and second paragraphs by “ethics committee of the Institut national de santé publique du Québec”.

6. Section 43 of the Act is amended by replacing “ethics committee” in the first paragraph by “ethics committee of the Institut national de santé publique du Québec”.

7. Section 95 of the Act is amended

(1) by striking out “a physician,” in the third line of the second paragraph;

(2) by inserting “other than a physician” after “health professional” in the fourth line of the second paragraph.

8. The Act is amended by inserting the following division after section 130:

“DIVISION IV

“GOVERNMENT PLAN OF ACTION TO PROTECT THE PUBLIC FROM VECTOR-BORNE DISEASES, INCLUDING THE WEST NILE VIRUS

“**130.1.** If the health of the public is threatened by vectors capable of transmitting a disease such as that caused by the West Nile virus, the Government may establish and implement a plan of action to control the vectors on the joint proposal of the Minister of Health and Social Services, the Minister of Sustainable Development, Environment and Parks and the Minister of Agriculture, Fisheries and Food, after consultation with the Minister of Municipal Affairs and Regions.

“**130.2.** The measures provided for in the government plan of action may call for the use of chemical pesticides only if the other measures available are considered to be insufficient.

Measures that call for the use of pesticides are exempt from the application of any general or special legislative or regulatory provision, including a municipal by-law, that prevents or delays the implementation of the measures. However, the Regulation respecting environmental impact assessment and review (R.R.Q., 1981, chapter Q-2, r.9) applies to these measures.

Furthermore, when the measures provided for in the government plan of action call for a pesticide treatment from the air or in an aquatic environment with a surface outlet flowing towards a drainage basin, the Minister of Health and Social Services must notify the Minister of Natural Resources and Wildlife and the Minister of Sustainable Development, Environment and Parks one week before application is to begin.

“130.3. Using the means considered to be the most efficient, the Minister of Health and Social Services must give the public concerned prior notification of the planned application of pesticides and information on the measures affording the best protection against the harmful effects of the pesticides.

“130.4. No person may hinder the implementation of the measures provided for in the government plan of action. The owner, lessee or occupant of a parcel of land is required to give free access to the land at all times so that the measures, in particular the use of pesticides, may be implemented.

“130.5. The government plan of action must be updated annually, if necessary, and made public.

“130.6. A report on the measures implemented to protect the public from the threat posed by disease-bearing vectors must be filed, within three months after the measures have been taken, with the Minister of Health and Social Services, who must immediately send a copy of the report to the other ministers concerned. The Minister must make the report public within 30 days after it is received.”

9. Section 137 of the Act is amended by striking out paragraph 3.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

10. Section 27.3 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is amended by adding the following paragraph at the end:

“If the user is under 14 years of age, the institution may use the name and address of the user’s father or mother for the same purpose. The other provisions of this section then apply in respect of that person as though the person were a user.”

11. Section 42 of the Act, amended by section 15 of chapter 32 of the statutes of 2005, is again amended by adding the following paragraph at the end:

“The medical examiner is answerable to the board of directors for the purposes of the examination procedure applicable to complaints concerning a physician, dentist or pharmacist, or a resident.”

12. The Act is amended by inserting the following section after section 209:

“209.0.1. Despite the second paragraph of section 209, an institution may choose not to set up an in-patients’ committee for a facility that provides lodging to fewer than 10 users or that expects to provide lodging to most of its users for a period of less than six months.

In such a case, after consulting its users’ committee, the institution must either entrust the exercise of the functions set out in section 212.1 to the users’ committee, or group the facility together with one or more other facilities maintained by the institution in order to establish one in-patients’ committee for all those facilities.

Sections 209 to 212.1 then apply, with the necessary modifications.

Each year, the institution must assess the effectiveness of the measure chosen under the second paragraph and, if need be, modify it in accordance with this section.”

13. Section 212 of the Act is amended by inserting the following subparagraph after subparagraph 5 of the first paragraph:

“(6) assess the effectiveness of any measure implemented under section 209.0.1.”

14. Section 395 of the Act is replaced by the following section:

“395. The agency is subject to sections 280 and 288 to 295, with the necessary modifications, with respect to the reports it must transmit to the Minister and the audits of its books and accounts it must have carried out.”

15. The Act is amended by inserting the following section after section 551:

“551.1. Despite paragraph 3 of section 323 and paragraph 2 of section 324, private institutions referred to in the first paragraph of section 551 may, after consulting with the agency concerned, and with the prior authorization of the Minister, be converted, if necessary, and amalgamate to form a new non-profit legal person otherwise than under this Act.

That legal person is deemed to be a private institution under the first paragraph of section 551 provided any sums it receives that are derived from the consolidated revenue fund do not cover more than 80% of the net amounts it would receive for its current operating expenditures if it were a public institution.”

OTHER PROVISIONS

16. Section 5 of Schedule I to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting the following paragraph after paragraph 5:

“(5.1) proceedings against decisions pertaining to compensation for victims, brought under section 54.7 of the Act respecting Héma-Québec and the haemovigilance committee (chapter H-1.1);”.

17. For the purposes of sections 290 and 395 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) and as regards the fiscal year of an agency that ends 31 March 2007,

(1) unless the board of directors decides otherwise, an auditor bound to the Auditor General by contract not later than (*insert the date of the day before the date of coming into force of this section*) is deemed to have been appointed by the board of directors of the agency, in accordance with the first paragraph of section 290, to audit the books and accounts of the agency for that fiscal year;

(2) the board of directors of an agency may appoint an auditor for its books and accounts for that fiscal year at any time before 1 March 2007.

In addition, the contract referred to in subparagraph 1 of the first paragraph terminates on (*insert the date of coming into force of this section*).

18. The provisions of this Act come into force on (*insert the date of assent to this Act*), except sections 1 and 16, which come into force on the date or dates to be set by the Government.

