



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 95
(2002, chapter 17)

**An Act to amend the Act respecting
childcare centres and childcare services
and the Act respecting the Ministère de
la Famille et de l'Enfance**

**Introduced 8 May 2002
Passage in principle 15 May 2002
Passage 6 June 2002
Assented to 8 June 2002**

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EXPLANATORY NOTES

This bill amends the Act respecting childcare centres and childcare services to provide that the Minister may not issue a permit if there exists any impediment to its issue, that is, if the applicant or, in the case of a legal person, one of its directors has exhibited behaviour that poses a threat to the security of children or is charged with or has been convicted of an indictable or criminal offence connected with the aptitudes and conduct required to provide proper childcare. Police forces will be under an obligation to furnish any information required to ascertain the existence of an impediment to the issue of a permit. In addition, permit holders will be required to furnish information or documents determined by regulation concerning any new director and sanctions will be attached to failure to establish that no such impediment exists.

The bill provides that a permit holder must, if so required, file with the Minister a certificate establishing compliance with the standards prescribed by the Act and the regulations. The Government shall determine the standards in respect of which a certificate must be filed.

The bill confers powers on the Minister and on inspectors as regards the safety of outdoor play areas and play equipment; the Minister may order corrective work and an inspector may, among other things, prohibit access to premises and affix seals.

The bill empowers the Minister in certain cases to dispense a holder of a childcare centre permit or an applicant for such a permit from providing childcare in a facility or from coordinating, overseeing and monitoring home childcare.

The bill provides that a school board holding a day care centre permit may continue to hold such permit, and determines the obligations incumbent upon the school board in such a case.

With respect to financing, the bill empowers the Minister to suspend or cancel, in certain cases, the payment of a grant to an applicant for a childcare centre permit or to a home childcare provider. The bill does away with the obligation to file budget estimates and requires permit holders that cease to operate and former permit holders to submit a financial report if they have received grants.

The bill clarifies a provision concerning applications for the review of decisions concerning reduced contributions and authorizes the Government to fix the maximum number of children that may be received by all the home childcare providers recognized by the holder of a childcare centre permit.

In addition, the bill provides that a permit holder or a home childcare provider whose decision is contested before the Administrative Tribunal of Québec is a party to the proceeding and must produce the documents relating to the matter within the prescribed time.

Lastly, the bill includes provisions for concordance as well as penal provisions.

Bill 95

AN ACT TO AMEND THE ACT RESPECTING CHILDCARE CENTRES AND CHILDCARE SERVICES AND THE ACT RESPECTING THE MINISTÈRE DE LA FAMILLE ET DE L'ENFANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 11.2 of the Act respecting childcare centres and childcare services (R.S.Q., chapter C-8.2) is replaced by the following section :

“11.2. A permit holder must also comply with the standards established by this Act and the regulations. In addition, the permit holder must, if so required, file with the Minister a certificate establishing compliance with such standards.

The Government may make regulations determining the standards in respect of which a certificate is required, the form and contents of the certificate and the time when it must be filed.”

2. Section 12 of the said Act is amended by adding the following sentence at the end of the second paragraph: “Notwithstanding section 5, the same applies to a day care centre permit in force on 7 June 2002 the renewal of which was obtained by a school board pursuant to section 159 of the Act respecting the Ministère de la Famille et de l'Enfance (chapter M-17.2).”

3. Section 13 of the said Act is amended by inserting “or a school board” after “municipality” in the first paragraph.

4. Section 13.1 of the said Act is amended by replacing “, its fiscal year as permit holder shall end on the same date as its fiscal year as a municipality” by “or a school board, its fiscal year as a permit holder shall end on the same date as its fiscal year as a municipality or a school board”.

5. Section 13.2 of the said Act is amended

(1) by adding “and, in the case of a school board, not later than 30 September each year” at the end of the first paragraph ;

(2) by inserting the following paragraph after the second paragraph :

“The first and second paragraphs also apply to a person that has ceased to operate or whose permit has been revoked or has not been renewed. The person must, in addition, submit a financial report to the Minister covering the period, if any, extending from the beginning of the following fiscal year to the date of cessation of operations or the date of expiry of the permit ; the second paragraph applies to such a report and the report must be submitted not later than three months after cessation of operations or notification of the Minister’s decision to revoke or not renew the permit.”

6. Section 13.3 of the said Act is repealed.

7. Section 13.4 of the said Act is amended by adding “and, in the case of a school board, not later than 30 September each year” at the end of the first paragraph.

8. Section 14 of the said Act is amended by adding “and provide, in respect of the new director, the information and documents required by regulation” at the end of the second paragraph.

9. Section 18.1 of the said Act is amended

(1) by replacing paragraphs 2 to 5 by the following paragraphs :

“(2) the applicant or, in the case of a legal person, a director of the applicant exhibits or has exhibited behaviour that could reasonably pose a threat for the physical and moral security of the children to whom the applicant proposes to provide childcare in a childcare centre, a day care centre, a nursery school or a stop over centre ;

“(3) the applicant or, in the case of a legal person, a director of the applicant is charged with or has been convicted of an indictable or criminal offence which is connected with the aptitudes and conduct required to operate a childcare centre, a day care centre, a nursery school or a stop over centre ;

“(4) the applicant or a director of the applicant was convicted of an offence under section 3 or 4 in the two years preceding the application ;

“(5) the applicant or a director of the applicant held a permit that was revoked or not renewed under paragraph 3, 4 or 5 of section 19 in the three years preceding the application ;” ;

(2) by adding the following paragraph at the end :

“Police forces in Québec are required to provide any information required by regulation that is needed to ascertain the existence of an impediment under subparagraph 2 or 3. The investigation must be in regard to any sexual misconduct, failure to provide necessities of life, criminal operation of a motor vehicle, violent behaviour, criminal negligence, fraud, theft, arson and drug or narcotic-related offence.”

10. The said Act is amended by inserting the following section after section 18.1:

“18.2. For the purpose of assessing the elements mentioned in subparagraphs 2 and 3 of the first paragraph of section 18.1, the Minister shall establish an advisory committee composed of persons who have expertise, experience and a marked interest in child protection.”

11. Section 19 of the said Act is amended by inserting the following paragraph after paragraph 2:

“(2.1) the permit holder has failed to establish, in accordance with this Act and the regulations, that no impediment exists under subparagraph 2 or 3 of the first paragraph of section 18.1;”.

12. Section 34.1 of the said Act is amended by inserting “or a school board” after “municipality” in subparagraph 3 of the first paragraph.

13. The said Act is amended by inserting the following sections after section 35:

“35.1. If a permit holder fails to comply with the safety standards prescribed by regulation for outdoor play spaces, outdoor play areas or play equipment in an outdoor play area, an inspector may issue a notice to the permit holder listing the deficiencies discovered and specifying the time within which they must be corrected.

If the permit holder fails to comply with the notice, the Minister may, at the permit holder’s expense, order such work as is necessary to ensure the safety of all or part of an outdoor play space, an outdoor play area or play equipment in an outdoor play area, or prohibit access thereto until the permit holder complies with this Act and the regulations.

“35.2. If an inspector discovers that the state of an outdoor play space, an outdoor play area or play equipment in an outdoor play area is a hazard for the children, the inspector shall order the immediate evacuation of all or any part thereof.

The permit holder may present observations to the Minister within the time specified in the evacuation order.

The Minister may suspend or cancel the inspector’s decision.

“35.3. An inspector may affix a seal to the play equipment, or part of the play equipment, access to which is prohibited under section 35.1 or 35.2.

“35.4. No person may break a seal affixed by an inspector.

“35.5. The Minister shall authorize access to the premises and the removal of seals, if any, when the Minister is satisfied that the premises are no longer a hazard for the children according to the standards prescribed by regulation.”

14. Section 36 of the said Act is amended by replacing “sections 34.1 and 35” in the first paragraph by “this division”.

15. Section 36.1 of the said Act is amended by adding the following subparagraph after subparagraph 3 of the first paragraph :

“(4) to advise a home childcare provider recognized by the holder of a childcare centre permit of the provider’s non-compliance with the provisions of Division IV of Chapter II or the regulations thereunder.”

16. Section 41.3 of the said Act is amended by replacing “the contribution or” by “the parent’s eligibility for the contribution or”.

17. The said Act is amended by inserting the following section after section 45 :

“45.0.1. A permit holder or a home childcare provider whose decision is contested before the Administrative Tribunal of Québec pursuant to section 42 or 44 is a party to the proceeding within the meaning of section 101 of the Act respecting administrative justice (chapter J-3) and must, among other things, send the documents and information referred to in the first paragraph of section 114 of that Act to the secretary of the Tribunal within 30 days of receipt of a copy of the motion.”

18. Section 73 of the said Act is amended

(1) by inserting the following paragraphs after paragraph 1 :

“(1.1) determining the information and documents to be provided by a permit holder following a change of director ;

“(1.2) requiring permit holders to send updated information and documents on request ;” ;

(2) by replacing paragraph 2 by the following paragraph :

“(2) establishing standards for the arrangement, equipment, furnishing, maintenance, heating and lighting of the premises where childcare is provided, making an outdoor play space mandatory, delimiting areas within the outdoor play space for specific uses and establishing standards for the arrangement, equipment, maintenance and safety of the play space or play areas ;” ;

(3) by replacing “prescribed outdoor play area” in paragraph 5 by “mandatory outdoor play space” ;

(4) by inserting the following paragraph after paragraph 5 :

“(5.1) determining the maximum number of children that may be received by all the home childcare providers recognized by the holder of a childcare centre permit;”;

(5) by inserting “or a school board” after “municipality” in paragraph 10;

(6) by striking out “, the budget estimates” after “financial report” in paragraph 10.1 ;

(7) by inserting the following paragraph after paragraph 19 :

“(19.1) determining, for the purposes of section 11.2, the standards in respect of which a permit holder must file a certificate, the form and contents of the certificate and the time when it must be filed;”.

19. The said Act is amended by inserting the following section after section 73.1 :

“73.1.1. The Minister may, by way of exception, dispense an applicant or a permit holder from providing childcare in a facility or from coordinating, overseeing and monitoring home childcare if the Minister considers that such form of childcare does not correspond to the needs and priorities determined by the Minister, if places giving entitlement to grants are not available in sufficient number to allow for a diversification of childcare services or if the applicant or permit holder proves to the Minister that it would hardly be feasible.”

20. Section 74 of the said Act is amended by replacing “or the second paragraph of section 8” by “or the second paragraph of section 8 or permit holder that gives access to an outdoor play space, outdoor play area or play equipment access to which is prohibited under section 35.1 or 35.2”.

21. Section 74.4 of the said Act is amended by inserting “or a school board” after “municipality”.

22. Section 74.5 of the said Act is amended

(1) by replacing “the report referred to in section 13.2 or, except in the case of a municipality, the budget estimates referred to in section 13.3, or records false or inaccurate information in the report referred to in section 13.2” in the first paragraph by “the report referred to in section 13.2 within the prescribed time or records false or inaccurate information in the report”;

(2) by inserting the following paragraph after the first paragraph :

“Every person subject to the third paragraph of section 13.2 that fails to submit a report required under that section within the prescribed time or

records false or inaccurate information in such a report is liable to a fine of \$500 to \$5,000 and, in the case of a second or subsequent offence, to a fine of \$1,000 to \$10,000.”;

(3) by inserting “within the prescribed time” after “section 13.4” in the second paragraph.

23. Section 74.8 of the said Act is amended by inserting “or 35.4 or person other than a permit holder that gives access to an outdoor play space, outdoor play area or play equipment access to which is prohibited under section 35.1 or 35.2” after “35”.

24. Section 76.1 of the said Act is amended

(1) by replacing “13 and 22” in the second paragraph by “13, 22 and 36.1”;

(2) by inserting the following paragraph after the second paragraph:

“The Minister may cancel or suspend, in whole or in part, the payment of grants to an applicant for a childcare centre permit if the applicant acts or has acted contrary to the rules of sound management applicable to an organization receiving grants out of public funds, if the applicant is using grants under section 41.6 for purposes other than those for which the grants were made or if there has been malfeasance or breach of trust on the part of the applicant.”

25. Section 157 of the Act respecting the Ministère de la Famille et de l’Enfance (R.S.Q., chapter M-17.2) is amended by inserting “unless, pursuant to section 73.1.1 of the Act respecting childcare centres and childcare services, the Minister dispenses the person from providing childcare in a facility or from coordinating, overseeing and monitoring home childcare” after “revocation of the permit” in the second paragraph.

26. Section 159 of the said Act is repealed.

27. Section 160 of the said Act is amended by inserting “unless, pursuant to section 73.1.1 of the Act respecting childcare centres and childcare services, the Minister dispenses the person from providing childcare in a facility or from coordinating, overseeing and monitoring home childcare” after “revocation of the permit” in subparagraph 4 of the first paragraph.

28. Section 171 of the said Act is amended by inserting “unless, pursuant to section 73.1.1 of the Act respecting childcare centres and childcare services, the Minister dispenses the permit holder from providing childcare in a facility or from coordinating, overseeing and monitoring home childcare” after “revocation of the permit” in the second paragraph.

29. Section 172 of the said Act is amended by inserting “unless, pursuant to section 73.1.1 of the Act respecting childcare centres and childcare services,

the Minister dispenses the applicant from providing childcare in a facility or from coordinating, overseeing and monitoring home childcare” after “revocation of the permit” in the second paragraph.

30. This Act comes into force on 8 June 2002, except the provisions of sections 1, 8 to 11, 13, 14, paragraphs 1 to 3 and 7 of section 18 and sections 20 and 23 which will come into force on the date or dates to be determined by the Government.