



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 70
(2002, chapter 22)

**An Act to amend the Act respecting
administrative justice and other
legislative provisions**

**Introduced 11 December 2001
Passage in principle 14 March 2002
Passage 12 June 2002
Assented to 13 June 2002**

**Québec Official Publisher
2002**

EXPLANATORY NOTES

This bill amends the Act respecting administrative justice as regards the renewal of the terms of office and the remuneration of the members of the Administrative Tribunal of Québec. It introduces similar provisions with respect to the members of the Commission des lésions professionnelles, the Régie du logement and the Commission des relations du travail.

Various procedural measures also included in the bill are designed to improve the conduct of proceedings before the Administrative Tribunal of Québec and to shorten processing times.

In addition, the composition of the Conseil de la justice administrative is modified and changes are made to its complaint examination procedure.

Finally, the bill contains consequential amendments that were omitted in earlier legislation.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);
- Labour Code (R.S.Q., chapter C-27);
- Act respecting municipal taxation (R.S.Q., chapter F-2.1);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting the Régie du logement (R.S.Q., chapter R-8.1).

Bill 70

AN ACT TO AMEND THE ACT RESPECTING ADMINISTRATIVE JUSTICE AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

ACT RESPECTING ADMINISTRATIVE JUSTICE

1. Section 24 of the Act respecting administrative justice (R.S.Q., chapter J-3) is amended

(1) by inserting “, education and road safety” after “social services” in the first line ;

(2) by inserting “, as regards health services and social services matters,” after “in particular” in the third line.

2. Section 25 of the said Act, amended by section 18 of chapter 29 of the statutes of 2001, is again amended by replacing the second and third paragraphs by the following paragraph :

“Proceedings referred to in paragraphs 1, 2.1.1, 2.3, 3, 4, 5, 6, 8, 9, 11, 13 and 14 of section 3 of Schedule I shall be heard and determined by a single member who shall be an advocate or notary.”

3. Section 27 of the said Act is amended

(1) by replacing “a panel of two members each of whom shall be an advocate or notary” in the first and second lines of the first paragraph by “a single member who shall be an advocate or notary” ;

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

“However, proceedings under section 188 of the Act respecting the Québec Pension Plan (chapter R-9) brought against a decision based on a person’s disability shall be heard and determined by a panel of two members one of whom shall be an advocate or notary and the other, a physician.”

4. Sections 48 and 49 of the said Act are replaced by the following sections :

“48. The term of office of a member shall be renewed for five years, according to the procedure established under section 49,

(1) unless the member is notified otherwise at least three months before the expiry of the term by the agent authorized therefor by the Government ; or

(2) unless the member requests otherwise and so notifies the Minister at least three months before the expiry of the term.

A variation of the term of office is valid only for a fixed period of less than five years determined in the instrument of renewal and, except where requested by the member for a valid reason, only where required by special circumstances stated in the instrument of renewal.

“49. The renewal of a term of office shall be examined according to the procedure established by government regulation. The regulation may, in particular,

(1) authorize the establishment of committees ;

(2) fix the composition of the committees and the mode of appointment of committee members, who shall neither belong to nor represent the Administration within the meaning of the Public Administration Act (chapter A-6.01) ;

(3) determine the criteria to be taken into account by the committees ;

(4) determine the information a committee may require from a member and the consultations it may hold.

An examination committee may not make a recommendation against the renewal of a member’s term of office without first having informed the member of its intention to make such a recommendation and of the reasons therefor and without having given the member the opportunity to present observations.

No judicial proceedings may be brought against members of an examination committee for any act done in good faith in the performance of their duties.”

5. Section 56 of the said Act is amended by adding “, and the method for determining the annual percentage of salary advancement up to the maximum salary rate and of the adjustment of the remuneration of members whose salary has reached the maximum rate” at the end of subparagraph 1 of the first paragraph.

6. Section 102 of the said Act, amended by section 27 of chapter 44 of the statutes of 2001, is again amended by adding “, a proceeding under section 65 of the Workmen’s Compensation Act (chapter A-3) or a proceeding under section 12 of the Act respecting indemnities for victims of asbestosis and silicosis in mines and quarries (chapter I-7)” at the end of the first paragraph.

7. Section 114 of the said Act is amended by replacing the second paragraph by the following paragraph :

“Within the same time, the municipal body responsible for the assessment must send the application for review and the assessor’s proposal or decision, the documents received by the assessor for the purposes of the review and the documents to which the assessor’s proposal or decision refers, as well as any certificate issued by the assessor since the filing of the motion instituting the proceedings.”

8. The said Act is amended by inserting the following section after section 118:

“118.1. A case before the Tribunal must be ready for hearing within 180 days of the filing of the motion to institute proceedings or, in the case of an expropriation matter, within 180 days of the filing of the offer of the expropriating party or the detailed claim of the expropriated party.

At the expiry of the 180-day period, the Tribunal may convene the parties to a case management conference or to a conciliation session.”

9. Section 119 of the said Act, amended by section 19 of chapter 29 of the statutes of 2001, is again amended by replacing “21.0.4” in the first line of paragraph 5 by “21.1”.

10. The said Act is amended by inserting the following division after section 119:

“DIVISION III.1

“CASE MANAGEMENT CONFERENCE

“119.1. Where warranted by the circumstances of a case, in particular where one of the parties fails to act within the time prescribed by law, the president of the Tribunal, the vice-president responsible for the division concerned or the member designated by either may, on his or her own initiative or at the request of one of the parties, convene the parties to a case management conference in order to

(1) come to an agreement with the parties as to the conduct of the proceeding, specifying the undertakings of the parties and determining the timetable to be complied with within the prescribed time ;

(2) if the parties fail to agree, determine a timetable for the proceeding, which is binding on the parties ;

(3) determine how the conduct of the proceeding may be simplified or accelerated and the hearing shortened, among other things by better defining the questions at issue or admitting any fact or document ;

(4) invite the parties to a conciliation session.

An agreement under subparagraph 1 must cover, among other subjects, the procedure and time limit for the communication of exhibits, written statements in lieu of testimony and detailed affidavits, and experts' appraisals.

“119.2. The minutes of the conference shall be drawn up and signed by the member having conducted the conference.

“119.3. If one of the parties fails to attend the conference, the Tribunal shall record the failure and make the decisions it considers appropriate.

“119.4. In a municipal taxation matter pertaining to a unit of assessment or a place of business in respect of which the property or rental value that is entered on the roll is equal to or greater than the value fixed by government regulation, and in an expropriation matter, the parties must file a proceeding timetable.

In a municipal taxation matter, the proceeding timetable must be filed within three months of the institution of proceedings, and in an expropriation matter, within three months of the filing of the offer of the expropriating party or the detailed claim of the expropriated party.

In a municipal taxation matter pertaining to a unit of assessment or a place of business in respect of which the property or rental value that is entered on the roll is less than the value fixed by government regulation, the municipal body responsible for the assessment must file the relevant assessor's report, and send a copy to the other party, not later than three months after the filing of the motion instituting the proceedings. The other party is required to file its expert's report, if any, within the ensuing two months.

“119.5. If the parties fail to comply with the timetable, the member may make the appropriate determinations, including foreclosure. The member may, on request, relieve a defaulting party from default if required in the interest of justice.”

11. Section 120 of the said Act is amended

(1) by replacing “suspend the proceedings for a period not exceeding 30 days in order to allow conciliation to take place” in the fifth and sixth lines of the first paragraph by “preside a conciliation session or allow such a session to be conducted by a personnel member chosen by the president of the Tribunal or by the person chosen by the president of the Tribunal”;

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

“In the case of a proceeding pertaining to a decision claiming the repayment of social security benefits wrongly received, a proceeding pertaining to a decision based on a person's disability in a pension plan matter or a proceeding

regarding compensation under the Automobile Insurance Act (chapter A-25), the president of the Tribunal or the vice-president responsible for the division concerned may convene the parties to an initial conciliation session and designate the conciliator. The parties are bound to attend.”

12. Section 121 of the said Act is replaced by the following sections :

“**121.** The purpose of conciliation is to facilitate dialogue between the parties and help them to identify their interests, assess their positions, negotiate and explore mutually satisfactory solutions.

Conciliation does not suspend the proceedings.

“**121.1.** After consulting with the parties, the conciliator shall define the rules applicable to the conciliation and any measure to facilitate its conduct, and determine the schedule of sessions.

Conciliation sessions are held in private, at no cost to the parties and without formality, and require no prior written documents.

Conciliation sessions are held in the presence of the parties and their representatives. With the consent of the parties, the conciliator may meet with the parties separately. Other persons may also take part in the sessions if the conciliator or the parties consider that their presence would be helpful in resolving the dispute.

“**121.2.** A member of the Tribunal presiding a conciliation session may, if necessary, modify the proceeding timetable.

However, if no settlement is reached, a member of the Tribunal having presided a conciliation session may not hear any application regarding the dispute.”

13. Section 122 of the said Act is amended by replacing “the member who pronounces the suspension of the proceedings” in the fourth and fifth lines by “the conciliator”.

14. Section 124 of the said Act is replaced by the following section :

“**124.** Any agreement reached shall be recorded in writing and signed by the conciliator, the parties and their representatives, if any. It is binding on the parties.

If the agreement is reached following a conciliation session presided by a member of the Tribunal, it terminates the proceedings and is enforceable as a decision of the Tribunal ; if the agreement is reached following a conciliation session conducted by a personnel member, it has the same effects provided it is homologated by the Tribunal.”

15. Section 128 of the said Act is amended by striking out the second paragraph.

16. Section 132 of the said Act is replaced by the following section :

“**132.** Any party wishing to summon a witness shall do so by means of a subpoena issued by a member or by the advocate representing the party and served in accordance with the rules of procedure of the Tribunal.

Any party may examine and cross-examine witnesses to the extent necessary to ensure a fair process.”

17. Section 167 of the said Act is replaced by the following section :

“**167.** The council shall be composed of the following members :

(1) the president of the Administrative Tribunal of Québec ;

(2) a member of the Administrative Tribunal of Québec other than the vice-president, chosen after consultation with all the members of the Tribunal ;

(3) the president of the Commission des lésions professionnelles ;

(4) a member of the Commission des lésions professionnelles other than the vice-president, chosen after consultation with all the commissioners of that Commission ;

(5) the president of the Commission des relations du travail ;

(6) a member of the Commission des relations du travail other than the vice-president, chosen after consultation with all the commissioners of that Commission ;

(7) the chairman of the Régie du logement ;

(8) a member of the Régie du logement other than the vice-chairman, after consultation with all the commissioners of the Régie ; and

(9) seven other persons who are not members of any of those bodies, two of whom only shall be advocates or notaries chosen after consultation with their professional order.”

18. Section 168 of the said Act is amended

(1) by replacing “paragraphs 2, 3 and 4” in the first paragraph by “paragraphs 2, 4, 6, 8 and 9” ;

(2) by replacing “of the Tribunal” in the first paragraph by “of any of the bodies referred to in paragraphs 1 to 8 of that section” ;

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

“At the expiry of their term, the members shall remain in office until they are replaced or reappointed.”

19. The said Act is amended by inserting the following section after section 171 :

“171.1. The chairman is in charge of the administration of the council. If absent or unable to act, the chairman shall be replaced by the member designated by the Minister.”

20. Section 177 of the said Act is amended

(1) by replacing “The” in the first line by “In addition to the functions assigned to it by law, the” ;

(2) by striking out paragraph 6 ;

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

“The council may also report to the Minister on any matter the Minister may submit to the council and make recommendations to the Minister concerning the administration of administrative justice by the bodies of the Administration whose president or chairman is a member of the council.”

21. The said Act is amended by inserting the following sections after section 184 :

“184.1. The council shall send of copy of the complaint to the Tribunal member concerned and may ask the member for an explanation.

“184.2. The council shall examine the complaint. For that purpose, it may require of any person such information as it considers necessary and examine the relevant record even if it is confidential under the terms of section 89.”

22. Section 186 of the said Act is amended by replacing the second paragraph by the following paragraphs :

“The council shall form an inquiry committee composed of three members, which shall be entrusted with conducting an inquiry into the complaint and disposing of it on behalf of the council.

Two members of the inquiry committee shall be chosen from among the members of the council referred to in paragraphs 3 to 9 of section 167, at least one of whom shall neither practise a legal profession nor be a member of a body of the Administration whose president or chairman is a member of the council. The third member of the inquiry committee shall be the member of

the council referred to in paragraph 2 of that section or shall be chosen from a list drawn up by the president of the Tribunal, after consulting all the members of the Tribunal. In the latter case and if the inquiry committee finds the complaint to be justified, the third member shall take part in the deliberations of the council for the purpose of determining a penalty.”

23. Section 194 of the said Act is amended by replacing “second paragraph” in the second line by “second and third paragraphs”.

24. The said Act is amended by inserting the following section after section 200:

“**200.1.** Not later than 1 April 2006, the Minister shall report to the Government on the implementation of the 180-day time limit prescribed by section 118.1 and on the advisability of making such modifications as the Minister considers expedient.

The Minister shall determine the indicators that will measure the results of the implementation of the time limit.

The second and third paragraphs of section 200 shall apply to the report.”

25. Schedule I to the said Act, amended by section 130 of chapter 9 of the statutes of 2001, section 107 of chapter 24 of the statutes of 2001, section 20 of chapter 29 of the statutes of 2001 and section 147 of chapter 60 of the statutes of 2001, is again amended by replacing “section 59” in the third line of paragraph 11 of section 3 by “section 48 or 59”.

26. Schedule II to the said Act, amended by section 67 of chapter 68 of the statutes of 2001, is again amended

(1) by striking out paragraph 8;

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

“(15) proceedings under section 13 of the Act respecting the reconstruction and redevelopment of areas affected by the torrential rains of 19 and 20 July 1996 in the Saguenay—Lac-Saint-Jean region (1997, chapter 60).”

27. Schedule III to the said Act, amended by section 24 of chapter 14 of the statutes of 2001, is again amended

(1) by inserting the following paragraph after paragraph 1.3:

“(1.4) proceedings against decisions or orders of Ville de Gatineau or, in the case of a delegation, decisions or orders of the executive committee or of a department head, brought under section 66 of Schedule IV to the Act to reform the municipal territorial organization of the metropolitan regions of Montréal, Québec and the Outaouais (2000, chapter 56);”;

(2) by replacing “21.0.4” in the second line of paragraph 2 by “21.1”.

28. Schedule IV to the said Act, amended by section 22 of chapter 10 of the statutes of 2000, section 65 of chapter 53 of the statutes of 2000 and section 98 of chapter 38 of the statutes of 2001, is again amended

(1) by striking out paragraph 4.1 ;

(2) by striking out paragraph 10 ;

(3) by replacing “section 36.16” in the first line of paragraph 13 by “sections 36.14 and 36.16” ;

(4) by striking out paragraph 20 ;

(5) by inserting the following paragraphs after paragraph 22 :

“(22.1) section 5.7 of the Act respecting farmers’ and dairymen’s associations (chapter S-23) ;

“(22.2) section 18 of the Horticultural Societies Act (chapter S-27) ;” ;

(6) by replacing “252” in paragraph 23 by “251” ;

(7) by replacing paragraph 24.1 by the following paragraph :

“(24.1) section 85 of the Act respecting transportation services by taxi (2001, chapter 15) ;”.

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

29. Sections 394 and 395 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) are replaced by the following sections :

“394. The term of office of a commissioner shall be renewed for five years, according to the procedure established under section 395,

(1) unless the commissioner is notified otherwise at least three months before the expiry of the term by the agent authorized therefor by the Government ; or

(2) unless the commissioner requests otherwise and so notifies the Minister at least three months before the expiry of the term.

A variation of the term of office is valid only for a fixed period of less than five years determined in the instrument of renewal and, except where requested by the commissioner for a valid reason, only where required by special circumstances stated in the instrument of renewal.

“395. The renewal of a term of office shall be examined according to the procedure established by government regulation. The regulation may, in particular,

- (1) authorize the establishment of committees ;
- (2) fix the composition of the committees and the mode of appointment of committee members, who shall neither belong to nor represent the Administration within the meaning of the Public Administration Act (chapter A-6.01) ;
- (3) determine the criteria to be taken into account by the committees ;
- (4) determine the information a committee may require from a commissioner and the consultations it may hold.

An examination committee may not make a recommendation against the renewal of a commissioner’s term of office without first having informed the commissioner of its intention to make such a recommendation and of the reasons therefor and without having given the commissioner the opportunity to present observations.

No judicial proceedings may be brought against members of an examination committee for any act done in good faith in the performance of their duties.”

30. Section 400 of the said Act is amended by replacing the fourth paragraph by the following paragraph :

“However, where the Conseil, for the purposes of section 186 of the said Act, forms an inquiry committee, two members of the committee shall be chosen from among the members of the Conseil referred to in paragraphs 1, 2 and 5 to 9 of section 167 of that Act, at least one of whom shall neither practise a legal profession nor be a member of a body of the Administration whose president or chairman is a member of the Conseil. The third member of the inquiry committee shall be the member of the Conseil referred to in paragraph 4 of that section or shall be chosen from a list drawn up by the president of the Commission, after consulting all the commissioners of the board. In the latter case and if the inquiry committee finds the complaint to be justified, the third member shall take part in the deliberations of the Conseil for the purpose of determining a penalty.”

31. Section 402 of the said Act is amended by adding “, and the method for determining the annual percentage of salary advancement up to the maximum salary rate and of the adjustment of the remuneration of commissioners whose salary has reached the maximum rate” at the end of subparagraph 1 of the first paragraph.

LABOUR CODE

32. Sections 137.19 and 137.20 of the Labour Code (R.S.Q., chapter C-27), enacted by section 63 of chapter 26 of the statutes of 2001, are replaced by the following sections :

“**137.19.** The term of office of a commissioner shall be renewed for five years, according to the procedure established under section 137.20,

(1) unless the commissioner is notified otherwise at least three months before the expiry of the term by the agent authorized therefor by the Government ; or

(2) unless the commissioner requests otherwise and so notifies the Minister at least three months before the expiry of the term.

A variation of the term of office is valid only for a fixed period of less than five years determined in the instrument of renewal and, except where requested by the commissioner for a valid reason, only where required by special circumstances stated in the instrument of renewal.

“**137.20.** The renewal of a term of office shall be examined according to the procedure established by government regulation. The regulation may, in particular,

(1) authorize the establishment of committees ;

(2) fix the composition of the committees and the mode of appointment of committee members, who shall neither belong to nor represent the Administration within the meaning of the Public Administration Act (chapter A-6.01) ;

(3) determine the criteria to be taken into account by the committees ;

(4) determine the information a committee may require from a commissioner and the consultations it may hold.

An examination committee may not make a recommendation against the renewal of a commissioner’s term of office without first having informed the commissioner of its intention to make such a recommendation and of the reasons therefor and without having given the commissioner the opportunity to present observations.

No judicial proceedings may be brought against members of an examination committee for any act done in good faith in the performance of their duties.”

33. Section 137.24 of the said Code, enacted by section 63 of chapter 26 of the statutes of 2001, is amended by replacing the fourth paragraph by the following paragraph :

“However, where the council, for the purposes of section 186 of the said Act, forms an inquiry committee, two members of the committee shall be chosen from among the members of the council referred to in paragraphs 1 to 4 and 7 to 9 of section 167 of that Act, at least one of whom shall neither practise a legal profession nor be a member of a body of the Administration whose president or chairman is a member of the council. The third member of the inquiry committee shall be the member of the council referred to in paragraph 6 of that section or shall be chosen from a list drawn up by the president of the Commission, after consulting all the commissioners of the Commission. In the latter case and if the inquiry committee finds the complaint to be justified, the third member shall take part in the deliberations of the council for the purpose of determining a penalty.”

34. Section 137.27 of the said Code, enacted by section 63 of chapter 26 of the statutes of 2001, is amended by adding “, and the method for determining the annual percentage of salary advancement up to the maximum salary rate and of the adjustment of the remuneration of commissioners whose salary has reached the maximum rate” at the end of subparagraph 1 of the first paragraph.

ACT RESPECTING MUNICIPAL TAXATION

35. Section 262 of the Act respecting municipal taxation (R.S.Q., chapter F-2.1), amended by section 134 of chapter 25 of the statutes of 2001, is again amended by inserting “, 119.4” after “85” in the fifth line of paragraph 8.3.

ACT RESPECTING THE RÉGIE DU LOGEMENT

36. Sections 7.6 and 7.7 of the Act respecting the Régie du logement (R.S.Q., chapter R-8.1) are replaced by the following sections :

“7.6. The term of office of a commissioner shall be renewed for five years, according to the procedure established under section 7.7,

(1) unless the commissioner is notified otherwise at least three months before the expiry of the term by the agent authorized therefor by the Government ; or

(2) unless the commissioner requests otherwise and so notifies the Minister at least three months before the expiry of the term.

A variation of the term of office is valid only for a fixed period of less than five years determined in the instrument of renewal and, except where requested by the commissioner for a valid reason, only where required by special circumstances stated in the instrument of renewal.

“7.7. The renewal of a term of office shall be examined according to the procedure established by government regulation. The regulation may, in particular,

- (1) authorize the establishment of committees;
- (2) fix the composition of the committees and the mode of appointment of committee members, who shall neither belong to nor represent the Administration within the meaning of the Public Administration Act (chapter A-6.01);
- (3) determine the criteria to be taken into account by the committees;
- (4) determine the information a committee may require from a commissioner and the consultations it may hold.

An examination committee may not make a recommendation against the renewal of a commissioner's term of office without first having informed the commissioner of its intention to make such a recommendation and of the reasons therefor and without having given the commissioner the opportunity to present observations.

No judicial proceedings may be brought against members of an examination committee for any act done in good faith in the performance of their duties.”

37. Section 7.14 of the said Act is amended by adding “, and the method for determining the annual percentage of salary advancement up to the maximum salary rate and of the adjustment of the remuneration of commissioners whose salary has reached the maximum rate” at the end of subparagraph 1 of the first paragraph.

38. Section 8.4 of the said Act is amended by replacing the second paragraph by the following paragraph:

“However, where the Conseil, for the purposes of section 186 of the said Act, forms an inquiry committee, two members of the committee shall be chosen from among the members of the Conseil referred to in paragraphs 1 to 6 and 9 of section 167 of that Act, at least one of whom shall neither practise a legal profession nor be a member of a body of the Administration whose president or chairman is a member of the Conseil. The third member of the inquiry committee shall be the member of the Conseil referred to in paragraph 8 of that section or shall be chosen from a list drawn up by the chairman of the board, after consulting all the commissioners of the board. In the latter case if the inquiry committee finds the complaint to be justified, the third member shall take part in the deliberations of the Conseil for the purpose of determining a penalty.”

39. The first regulations made under section 49 of the Act respecting administrative justice, section 395 of the Act respecting industrial accidents and occupational diseases and section 7.7 of the Act respecting the Régie du logement are not subject to the publication requirement prescribed by section 8 of the Regulations Act (R.S.Q., chapter R-18.1).

40. The term of office of the members of the Conseil de la justice administrative referred to in paragraphs 2 and 3 of section 167 of the Act respecting administrative justice, as it read before it was replaced by section 17 of this Act, shall terminate on 12 June 2002.

41. A time limit introduced by this Act shall begin to run on the date of coming into force of the enacting provision.

42. The provisions of this Act come into force on 13 June 2002, except

- sections 7 and 8, section 10, insofar as it enacts section 119.4 of the Act respecting administrative justice, and sections 24 and 35, which come into force on the date or dates to be fixed by the Government; and

- sections 32, 33 and 34, which come into force on the date of coming into force of section 137.27 of the Labour Code, enacted by section 63 of the Act to amend the Labour Code, to establish the Commission des relations du travail and to amend other legislative provisions (2001, chapter 26).