



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 103
(2005, chapter 17)

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

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EXPLANATORY NOTES

This bill amends the Act respecting administrative justice to provide that the members of the Administrative Tribunal of Québec are appointed to hold office during good behaviour. It also introduces new rules concerning ethics and amends certain rules of procedure applicable before the Tribunal.

In matters of compensation and benefits, the bill establishes a new proceeding before the Tribunal that makes it possible to contest a decision for which an application for an administrative review has been submitted and that has not been reviewed upon expiry of the time limit. The bill also provides that the Tribunal offers conciliation upon receipt of a case record in such a matter.

LEGISLATION AMENDED BY THIS BILL:

- Workers' Compensation Act (R.S.Q., chapter A-3);
- Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);
- Automobile Insurance Act (R.S.Q., chapter A-25);
- Health Insurance Act (R.S.Q., chapter A-29);
- Taxation Act (R.S.Q., chapter I-3);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);
- Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001);
- Act respecting parental insurance (2001, chapter 9);
- Individual and Family Assistance Act (2005, chapter 15).

Bill 103

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 22.1 of the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by adding “or a psychologist” at the end.

2. Section 38 of the Act is replaced by the following section:

“38. The Tribunal shall be composed of independent and impartial members appointed by the Government, in a number determined according to the needs of the Tribunal, to hold office during good behaviour.”

3. The Act is amended by inserting the following section after section 39:

“39.1. The Government may determine the place of residence of a member.”

4. Section 40 of the Act is amended

(1) by replacing “, and at least two others” in the second line by “, at least two”;

(2) by adding “and at least two other members shall be psychologists” at the end.

5. Division III of Chapter III of Title II of the Act, comprising sections 46 to 50, is repealed.

6. The heading of Division IV of Chapter III of Title II of the Act is amended by replacing “PREMATURE TERMINATION OF TERM OF OFFICE” by “TERMINATION OF APPOINTMENT”.

7. Section 51 of the Act is amended by replacing “The term of office of a member may terminate prematurely only on his retirement or resignation” in the first line by “The appointment of a member may terminate only on the member’s retirement or resignation”.

8. Section 55 of the Act is amended

(1) by replacing “may, with the authorization of and for the time determined by the president of the Tribunal, continue to perform his duties after the expiry of his term of office” in the first, second and third lines of the first paragraph by “who has retired or resigned may, with the authorization of and for the time determined by the president of the Tribunal, continue to perform his duties”;

(2) by striking out the second paragraph.

9. Section 58 of the Act is amended by adding “, except to take into account a retirement pension from the Québec public sector that is paid to the member” at the end of the first paragraph.

10. Section 60 of the Act is replaced by the following section:

“60. A public servant appointed as a member of the Tribunal ceases to be a public servant.”

11. Section 65 of the Act is amended by replacing “on the premature termination or non-renewal of his term of office as a member of the Tribunal,” in the second and third lines by “on the termination of his appointment”.

12. Section 75 of the Act is amended by adding the following subparagraphs after subparagraph 4 of the second paragraph:

“(5) periodically evaluating the knowledge and skills of the members in the performance of their duties and their contribution to the processing of the cases before the Tribunal and to the achievement of the objectives of this Act;

“(6) designating a member to coordinate the activities of the Tribunal in one or more regions and, if the volume of proceedings so requires, determining that the place of residence of that member is to be in one of those regions.”

13. Section 82 of the Act is amended

(1) by replacing “necessary in order to avoid delays in the hearing of proceedings by the Tribunal” in the first and second lines of the third paragraph by “expedient”;

(2) by striking out the fifth paragraph.

14. Section 102 of the Act, amended by section 157 of chapter 15 of the statutes of 2005, is again amended by adding “; however, a professional who has been removed from the roll or declared disqualified to practise, or whose right to engage in professional activities has been restricted or suspended in accordance with the Professional Code (chapter C-26) or any legislation governing a profession may not act as a representative.” at the end of the first paragraph.

15. Section 106 of the Act is amended

(1) by replacing “serious and valid” in the second and third lines of the first paragraph by “valid”;

(2) by striking out the second paragraph.

16. Section 109 of the Act is amended by replacing “made after consultation with the Conseil de la justice administrative and upon approval by” in the first and second lines of the third paragraph by “subject to the approval of”.

17. Section 110 of the Act is amended by adding the following sentence at the end of the first paragraph: “There is no time limit for bringing a proceeding arising out of the failure by the administrative authority to dispose of an application for an administrative review within the time prescribed by law.”

18. The Act is amended by inserting the following section after section 114:

“**114.1.** If an administrative authority fails to send a copy of the case record within the time prescribed in section 114, the applicant may request that the Tribunal fix an indemnity it considers fair and reasonable considering the circumstances of the case and the extent of the delay.”

19. The Act is amended by inserting the following section before section 120:

“**119.6.** Upon receipt by the Tribunal of a copy of a case record pertaining to indemnification or benefits, and if the matter and circumstances so permit, the president of the Tribunal, the vice-president in charge of the division concerned or the member designated by either of them must offer the parties a conciliation session conducted by a member or a personnel member chosen by the president of the Tribunal or a person designated by the president.”

20. The heading of Title III of the Act is amended by adding “AND ETHICS” at the end.

21. Section 177 of the Act is amended by striking out subparagraph 1 of the first paragraph.

22. The Act is amended by inserting the following section before section 180:

“**179.1.** The members of the Tribunal must perform their duties purposefully, maintain their competence and act diligently. They must avoid placing themselves in a position that undermines such performance of their duties and must conduct themselves in a manner fully compatible with the honour, dignity and integrity required by adjudicative functions.”

23. Section 181 of the Act is amended by inserting the following paragraph after the first paragraph:

“The code of ethics shall also set out rules concerning the maintenance of competence of members in the exercise of their functions.”

24. Section 184.2 of the Act is replaced by the following sections:

“184.2. Unless the complaint is lodged by the Minister, the council shall form a committee, composed of seven council members, to determine whether a complaint is admissible.

Three committee members shall be chosen from among the council members referred to in paragraph 9 of section 167; the other committee members shall be chosen from among the council members representing a body of the Administration whose president or chair is a council member.

“184.3. The committee may require of any person the information it considers necessary and examine the relevant record even if it is confidential under section 89.”

25. Section 185 of the Act is replaced by the following section:

“185. The committee may dismiss any clearly unfounded complaint.

The committee shall forward a copy of its decision, with reasons, to the complainant and to the council.”

26. Section 186 of the Act is amended by replacing “Where the council considers that the complaint is” in the first line of the first paragraph by “Where the complaint has been determined”.

27. Schedule I to the Act, amended by section 191 of chapter 20 of the statutes of 2004, sections 69 and 70 of chapter 31 of the statutes of 2004, section 158 of chapter 15 of the statutes of 2005 and section 14 of chapter 16 of the statutes of 2005, is again amended

(1) by inserting the following paragraph after paragraph 5.1 of section 3:

“(6) proceedings against decisions relating to permits under section 41 of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (chapter L-0.2);”;

(2) by striking out “on a reconsideration” in the first line of paragraph 1 of section 4;

(3) by striking out “in review” in the first line of paragraph 6 of section 5.

28. Schedule II to the Act, amended by section 222 of chapter 6 of the statutes of 2005, is again amended

(1) by striking out paragraph 6;

(2) by striking out paragraph 7;

(3) by striking out paragraph 11;

(4) by adding the following paragraphs after paragraph 14:

“(15) proceedings under section 9 of the Act respecting Ville de Varennes (1997, chapter 106);

“(16) proceedings under section 9 of the Act respecting Ville de Saint-Basile-le-Grand (1999, chapter 97);

“(17) proceedings under section 9 of the Act respecting Ville de Contrecoeur (2002, chapter 95);

“(18) proceedings under section 10 of the Act respecting Ville de Brownsburg-Chatham, Ville de Lachute and Municipalité de Wentworth-Nord (2004, chapter 46).”

29. Schedule III to the Act is amended by adding the following paragraph at the end:

“(6) proceedings under section 27 of the Act respecting roads (chapter V-9);”.

30. Schedule IV to the Act, amended by section 82 of chapter 37 of the statutes of 2004 and section 68 of chapter 10 of the statutes of 2005, is again amended by replacing “26” in the first line of paragraph 29 by “38”.

WORKERS’ COMPENSATION ACT

31. Section 65 of the Workers’ Compensation Act (R.S.Q., chapter A-3) is amended by adding the following paragraph at the end:

“Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the review board does not make a decision within 90 days after the receipt of the application, subject to the following:

(1) if the person who applied for the review requested more time to present observations or produce documents, the 90-day time limit runs from the time observations are presented or documents are produced; and

(2) if the board considers it necessary, to allow it to make a decision, that an examination be conducted by a health professional or that documents be

produced, the time limit is extended for 90 days; the person who applied for the review must be notified of the extension.”

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

32. Section 429.17 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended by adding “except a professional who has been removed from the roll or declared disqualified to practise, or whose right to engage in professional activities has been restricted or suspended in accordance with the Professional Code (chapter C-26) or any legislation governing a profession” at the end.

AUTOMOBILE INSURANCE ACT

33. Section 83.43 of the Automobile Insurance Act (R.S.Q., chapter A-25) is amended by adding the following sentence at the end of the second paragraph: “The officer shall also inform the person that he may contest the decision before the Administrative Tribunal of Québec, subject to the conditions set out in the second paragraph of section 83.49.”

34. Section 83.49 of the Act is amended by adding the following paragraph at the end:

“Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the Société does not make a decision within 90 days after the receipt of the application, subject to the following:

(1) if the person who applied for the review requested more time to present observations or produce documents, the 90-day time limit runs from the time observations are presented or documents are produced; and

(2) if the Société considers it necessary, to allow it to make a decision, that an examination be conducted by a health professional or that documents be produced, the time limit is extended for 90 days; the person who applied for the review must be notified of the extension.”

HEALTH INSURANCE ACT

35. Section 18.4 of the Health Insurance Act (R.S.Q., chapter A-29) is amended by adding the following paragraph at the end:

“Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the Board does not make a decision within 90 days after the receipt of the application, subject to the following:

(1) if the person who applied for the review requested more time to present observations or produce documents, the 90-day time limit runs from the time observations are presented or documents are produced; and

(2) if the Board considers it necessary, to allow it to make a decision, that an examination be conducted by a health professional or that documents be produced, the time limit is extended for 90 days; the person who applied for the review must be notified of the extension.”

TAXATION ACT

36. Section 1029.8.61.34 of the Taxation Act (R.S.Q., chapter I-3), enacted by section 257 of chapter 1 of the statutes of 2005, is amended by replacing “and the right to apply for a review of the decision within the time limit provided for in section 1029.8.61.39” in the second paragraph by “, the right to apply for a review of the decision within the time limit provided for in section 1029.8.61.39 and, subject to the conditions set out in section 1029.8.61.41, the right to contest the review decision before the Administrative Tribunal of Québec”.

37. Section 1029.8.61.41 of the Act, enacted by section 257 of chapter 1 of the statutes of 2005, is amended by adding the following paragraph at the end:

“Moreover, an individual may contest before the Tribunal the decision whose review the individual applied for if the Board does not make a decision within 90 days after the receipt of the application, subject to the following:

(a) if the individual who applied for the review requested more time to present observations or produce documents, the 90-day time limit runs from the time observations are presented or documents are produced; and

(b) if the Board considers it necessary, to allow it to make a decision, that an examination be conducted by a health professional or that documents be produced, the time limit is extended for 90 days; the individual who applied for the review must be notified of the extension.”

ACT RESPECTING THE QUÉBEC PENSION PLAN

38. Section 140 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing “and of his right to apply for a review within the time prescribed in section 186” in the first paragraph by “, of his right to apply for a review within the time prescribed in section 186 and, subject to the conditions set out in the second paragraph of section 188, of his right to contest the review decision before the Administrative Tribunal of Québec”.

39. Section 149 of the Act is amended by replacing “and the right of the debtor to apply for a review of the decision within the period prescribed in section 186” in the first paragraph by “, the right of the debtor to apply for a review of the decision within the period prescribed in section 186 and, subject to the conditions set out in the second paragraph of section 188, his right to contest the review decision before the Administrative Tribunal of Québec”.

40. Section 188 of the Act is amended by adding the following paragraph at the end:

“Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the Board does not make a decision within 90 days after the receipt of the application, subject to the following:

(1) if the person who applied for the review requested more time to present observations or produce documents, the 90-day time limit runs from the time observations are presented or documents are produced; and

(2) if the Board considers it necessary, to allow it to make a decision, that an examination be conducted by a health professional or that documents be produced, the time limit is extended for 90 days; the person who applied for the review must be notified of the extension.”

ACT RESPECTING INCOME SUPPORT, EMPLOYMENT ASSISTANCE AND SOCIAL SOLIDARITY

41. Section 112 of the Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001) is amended by replacing “and the debtor’s right to apply for a review” at the end of the first sentence of the first paragraph by “, the debtor’s right to apply for a review and, subject to the conditions set out in the second paragraph of section 139, the debtor’s right to bring a proceeding before the Administrative Tribunal of Québec”.

42. Section 139 of the Act is amended by adding the following paragraph at the end:

“Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the person in charge of the review does not dispose of the application within 90 days following its receipt or following the decision of the Tribunal returning the file for review in accordance with the second paragraph of section 132. However, the time limit runs from the time observations are presented or documents are produced if a person requested more time for that purpose.”

43. Section 141 of the Act, amended by section 176 of chapter 15 of the statutes of 2005, is again amended by striking out “a review decision concerning” in the second and third lines.

ACT RESPECTING PARENTAL INSURANCE

44. Section 29 of the Act respecting parental insurance (2001, chapter 9), amended by section 19 of chapter 13 of the statutes of 2005, is again amended by replacing “and the debtor’s right to apply for a review of the decision within the period prescribed by section 39” in the first paragraph by “, the debtor’s right to apply for a review of the decision within the period prescribed by section 39 and, subject to the conditions set out in the second paragraph of

section 40, the debtor's right to contest the review decision before the Administrative Tribunal of Québec”.

45. Section 40 of the Act is amended by adding the following paragraph at the end:

“Moreover, the decision whose review was applied for may be contested before the Tribunal if the Minister does not dispose of the application within 90 days following its receipt or, if the applicant requested more time to present observations or produce documents, following presentation of the observations or production of the documents.”

INDIVIDUAL AND FAMILY ASSISTANCE ACT

46. Section 97 of the Individual and Family Assistance Act (2005, chapter 15) is amended by replacing “and the debtor's right to apply for a review” in the third line of the first paragraph by “, the debtor's right to apply for a review and, subject to the conditions set out in the second paragraph of section 118, the debtor's right to contest the review decision before the Administrative Tribunal of Québec”.

47. Section 118 of the Act is amended by adding the following paragraph at the end:

“Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the person in charge of the review does not dispose of the application within 90 days following its receipt or following the decision of the Tribunal returning the file for review in accordance with the second paragraph of section 112. However, the time limit runs from the time observations are presented or documents are produced if a person requested more time for that purpose.”

TRANSITIONAL PROVISIONS

48. The members of the Administrative Tribunal of Québec in office on (*insert the date preceding the date of coming into force of section 2*) are deemed to have been appointed to hold office during good behaviour.

A full-time member in office on (*insert the date preceding the date of coming into force of section 2*) who resigns or retires on the date of expiry of his or her term is entitled to the transition allowance provided for in section 24 of the Regulation respecting the remuneration and other conditions of office of members of the Administrative Tribunal of Québec enacted by Order in Council 318-98 (1998, G.O. 2, 1443).

Full leave without pay granted to a public servant appointed to the Tribunal ends on the same date. A member on full leave without pay from the public service who resigns before that date is reinstated in the public service according to the rules set out in section 23 of that regulation.

49. Any provision of this Act introducing a new proceeding before the Administrative Tribunal of Québec to contest an initial decision made by an administrative authority is applicable to applications for review made before the date of the coming into force of the provision, as if the applications had been received on that date.

50. The provisions of this Act come into force on the date or dates to be set by the Government.