



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 72
(2008, chapter 16)

Crop Health Protection Act

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Passed in principle 29 April 2008
Passed 10 June 2008
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EXPLANATORY NOTES

The object of this Act is to protect plants grown for commercial purposes from the harmful organisms identified by the Minister of Agriculture, Fisheries and Food. To achieve this, it replaces the Plant Protection Act, the Act respecting prevention of disease in potatoes and Division IV of the Agricultural Abuses Act by a new Act on crop health protection.

The Act gives the Government the power to designate protected crop zones in respect of which phytosanitary measures will be prescribed by regulation of the Minister. It empowers the Minister, among other things, to order that specified phytosanitary measures be implemented, have such measures implemented at the expense of persons who are the subject of an order and authorize a person to derogate from a regulatory provision for scientific or experimental purposes.

Moreover, the Act confers on inspectors appointed by the Minister powers of inspection, seizure and confiscation enabling them to enforce established phytosanitary standards. It gives the Minister the necessary regulatory powers to apply the Act, in particular to establish phytosanitary measures applicable to various harmful organisms and standards regarding the transfer and transportation of plants.

Lastly, the Act provides for offences and penalties permitting enforcement and contains transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

- Agricultural Abuses Act (R.S.Q., chapter A-2).

LEGISLATION REPEALED BY THIS ACT:

- Act respecting prevention of disease in potatoes (R.S.Q., chapter P-23.1);
- Plant Protection Act (R.S.Q., chapter P-39.01).

Bill 72

CROP HEALTH PROTECTION ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

INTERPRETATION

1. The object of this Act is to protect the health of plants grown for commercial purposes by a producer within the meaning of the Farm Producers Act (R.S.Q., chapter P-28), other than plants destined for reforestation.

For the purposes of this Act, the term “plants” includes the parts and raw products of a plant.

2. This Act is binding on the Government, on government departments and on bodies that are mandataries of the State.

3. For the purposes of this Act and unless the context indicates otherwise, the term “person” includes a partnership, an association, a cooperative and a body.

CHAPTER II

HARMFUL ORGANISMS

4. The Minister identifies by regulation the harmful organisms covered by this Act and, where applicable, the phytosanitary measures that apply.

The Minister may also identify by regulation the harmful organisms whose presence must be reported to the Minister.

If a harmful organism constitutes a threat by reason of a high and imminent risk of its spreading to commercial crops, the regulation identifying the harmful organism or the phytosanitary measures that apply is not subject to the provisions of Division III of the Regulations Act (R.S.Q., chapter R-18.1) on the publication of draft regulations. Despite sections 17 and 18 of that Act, the regulation comes into force on the date it is issued; in addition to being published in the *Gazette officielle du Québec*, it is publicized by any means that ensures that the persons concerned are rapidly and efficiently informed.

For the purposes of this Act, the term “phytosanitary measures” includes all the means, particularly biological, chemical or physical means, that can be implemented to prevent the introduction or propagation of a harmful organism, and control, remove or eradicate it.

5. A person who owns or has custody of plants, substrates or other property must implement phytosanitary measures to ensure that they do not spread harmful organisms to a commercial crop.

6. A person who observes or has reasonable grounds to believe in the presence of an invasive exotic species or a harmful organism identified under the second paragraph of section 4 must report it to the Minister without delay and, upon request, provide any relevant information.

For the purposes of this Act, the term “invasive exotic species” means a plant, animal or microorganism present outside its natural distribution range and liable to damage a commercial crop.

CHAPTER III

PROTECTED CROP ZONES

7. The Government may designate any part of the territory of Québec as a protected crop zone, in respect of any species of plant or type of production it determines.

Before designating a zone as a protected crop zone, the Government must publish in the *Gazette officielle du Québec* and publicize, using any means that ensures that the persons concerned are rapidly and efficiently informed, a notice stating its intentions and the period within which an order in council may not be made but within which an interested person may send comments to the person specified in the notice.

The order in council designating a zone as a protected crop zone comes into force on the date specified in it. The order is published in the *Gazette officielle du Québec* and publicized by any means that ensures that the persons concerned are rapidly and efficiently informed.

8. The Minister determines by regulation which phytosanitary measures apply in any protected crop zone designated under section 7.

CHAPTER IV

INSPECTION, SEIZURE AND CONFISCATION

9. The Minister appoints the inspectors necessary for the enforcement of this Act and may provide for the remuneration of those among them who are not remunerated under the Public Service Act (R.S.Q., chapter F-3.1.1).

10. The Minister may enter into an agreement with a person regarding the carrying out of an inspection program for the enforcement of this Act. Such an agreement must be evidenced in a document and provide for the method of implementing the program.

11. An inspector who has reasonable cause to believe in the presence of a harmful organism, an invasive exotic species or any property to which this Act applies may, when carrying out an inspection,

(1) at any reasonable time, enter the place where the harmful organism, invasive exotic species or property is located and, in the case of a vehicle, order that it be immobilized;

(2) examine the place or the harmful organism, invasive exotic species or property, and take specimens free of charge, take photographs and make recordings;

(3) require the production of any document for examination or for the purpose of making copies or obtaining extracts, if the inspector has reasonable cause to believe that it contains information related to the application of this Act; and

(4) be accompanied by persons the inspector considers necessary for the purposes of the inspection.

The inspector must, on request, provide identification and produce a certificate of authority signed by the Minister.

12. The inspector may, when carrying out an inspection, require a person to provide, within a reasonable time determined by the inspector, any information or document relating to the application of this Act.

The person of whom the request is made must comply within the time specified.

13. The owner or custodian of a place being inspected, as well as the employees, are required to lend assistance to an inspector carrying out an inspection, and to the persons accompanying the inspector.

14. An inspector who has reasonable cause to believe that plants, substrates or other property are liable to spread a harmful organism to a commercial crop may order the owner or custodian to implement and pay for the phytosanitary measures the inspector specifies.

Before issuing an order, the inspector must inform the person concerned of the inspector's intention to do so, specifying the grounds on which it is based, and give the person an opportunity to submit observations.

The order must be issued in writing, set out the inspector's reasons and refer to any document the inspector took into consideration; it must also inform the person concerned that a copy of such documents may be requested. The order takes effect on the date of notification or on any later date specified in the order.

The second paragraph does not apply if, in the opinion of the inspector, urgent action is required or there is a danger of irreparable damage being caused. In such a case, a person notified of an order may, within the time specified in the order, submit observations with a view to having the inspector reconsider it.

If the person to whom the order applies refuses or neglects to comply with it, the inspector may personally carry out the order or have it carried out at the expense of that person. The sums involved bear interest at the legal rate from the time as of which they were payable.

The carrying out of measures prescribed by the inspector does not give rise to claims for damages, except in cases of bad faith.

15. An inspector may seize plants, substrates or any other property to which this Act applies, if the inspector has reasonable cause to believe that they were used in the commission of an offence under this Act or its regulations, or that an offence was committed in connection with them.

An inspector who seizes property draws up minutes giving the inspector's name, the date and time, the place of and grounds for the seizure, the description of the seized property, the name and address of the person from whom the property was seized and any information allowing the person entitled to the property to be identified. The inspector gives a copy of the minutes to the person from whom the property was seized or to the person responsible for the place where the property was seized.

16. The owner or custodian of the seized property has custody of it.

Despite the first paragraph, the inspector may designate a different custodian or remove the seized property to other premises for safekeeping.

Custody of the seized property is maintained until it is disposed of in accordance with sections 17 to 20 or, if proceedings are instituted, until a judge decides otherwise.

17. If the seized property is perishable or likely to depreciate rapidly, or if its custody would entail costs disproportionate to its value, a judge may authorize its sale or disposal on the application of the seizer, the person from whom the property was seized or any person who claims to have a right in the property if the sale or disposal can be carried out without the risk of spreading a harmful organism to a commercial crop.

A person intending to make an application must give at least one clear day's notice to the seizer or, where applicable, to the person from whom the property was seized and any person who claims to have a right in the property. However, the judge may exempt a person from giving notice if deterioration of the property is imminent.

The conditions of the sale or disposal are determined by the judge. The proceeds of the sale are deposited with the Minister of Finance in accordance with the Deposit Act (R.S.Q., chapter D-5).

18. Seized property or the proceeds of its sale must be returned to its owner or custodian if

(1) a period of 90 days has elapsed from the date of the seizure and no proceedings have been instituted; or

(2) the inspector is of the opinion, after verification during that period, that no offence under this Act or its regulations has been committed or that the owner or custodian of the seized property has complied with this Act since the seizure.

19. The owner or custodian of the seized property may apply to a judge to obtain the return of the property or the proceeds of its sale.

The application must be served on the seizer or, if proceedings are instituted, on the prosecutor.

The judge grants the application if the judge is of the opinion that the applicant will suffer serious or irreparable injury if the property is held any longer, that returning the property will not hinder the course of justice and that there is no high or imminent risk that a harmful organism or an invasive exotic species will be spread to commercial crops through the property.

20. If the owner or custodian of seized property is unknown or untraceable, the property, or the proceeds of its sale, is turned over to the Minister of Revenue 90 days after the date of seizure. A statement describing the property and giving the name and last known address of the interested party must be sent to the Minister of Revenue at that time.

Despite the first paragraph, if the property is liable to spread a harmful organism to a commercial crop, the Minister determines the procedure for disposing of it.

21. On application of the seizer, a judge may order that the holding period be prolonged for a maximum of 90 days.

Before deciding on the merit of the application, the judge may order that it be served on the person the judge designates.

22. On application of the prosecutor, a judge may, upon conviction for an offence under this Act or its regulations, issue an order prohibiting the person convicted of the offence from growing or keeping plants, limiting the number of plants the person may grow or keep or prescribing any other condition pertaining to the growing or keeping of plants the judge considers necessary for a period not exceeding two years.

The judge may also order the confiscation of property seized under section 15, or the proceeds of its sale, and property kept in contravention of an order referred to in the first paragraph.

Prior notice of the application for confiscation must be given by the prosecutor to the person from whom the property was seized, to the defendant and to any person who claims to have a right in the property, unless they are in the presence of the judge.

If property confiscated under this chapter is liable to spread a harmful organism to a commercial crop, the Minister determines the procedure for disposing of it.

23. No judicial proceedings may be instituted against the inspector for acts performed in good faith while carrying out an inspection.

CHAPTER V

POWERS OF THE MINISTER

24. If a harmful organism or invasive exotic species constitutes a threat to commercial crops in a zone the Minister determines, the Minister may, on the ground of urgency, order the owners or custodians of plants, substrates or any other property located in that zone and liable to spread the organism or species to implement and pay for the phytosanitary measures the Minister specifies.

The order must be issued in writing, set out the Minister's reasons and refer to any document the Minister took into consideration. The order takes effect on the date of notification or on any later date specified in the order.

The second paragraph does not apply if, in the opinion of the Minister, urgent action is required or there is a danger of irreparable damage being caused. In that case, a person notified of an order may, within the time specified in the order, submit observations with a view to having the Minister reconsider it.

If the person to whom the order applies refuses or neglects to comply with it, the Minister may have the order carried out at the expense of that person. The sums involved bear interest at the legal rate from the time as of which they were payable.

The carrying out of measures prescribed by the Minister does not give rise to claims for damages, except in cases of bad faith.

25. The Minister may, for scientific or experimental purposes, authorize a person to derogate from a regulation made under section 4, 8 or 27, on the conditions the Minister determines.

Before issuing an authorization, the Minister takes into account, in particular but not exclusively, the objectives pursued by the applicant, the competence and experience of the applicant, the nature of the proposed activities and their impact on commercial crops, and the measures necessary to ensure their protection.

The holder of such an authorization must satisfy the conditions and comply with the restrictions and prohibitions determined by the Minister and set out in the authorization. The holder of the authorization must also pay to the Government the costs incurred to open and examine the file and all the other costs incurred by the Minister in relation to the authorization.

26. The Minister may withdraw the authorization granted under section 25 if the holder fails to satisfy the conditions or comply with the restrictions and prohibitions set out in the authorization.

27. In addition to the regulatory powers under this Act, the Minister may make regulations to establish standards for crop health protection and the transfer or transportation of plants. The standards may, in particular, pertain to the surveillance of the health status and traceability of plants, their labelling or packaging, the registration of their owner or custodian, the introduction into Québec of plants originating elsewhere and the fees payable for the purposes of this Act.

28. No judicial proceedings may be instituted against the Minister for acts performed in good faith for the purposes of this Act.

CHAPTER VI

PENAL PROVISIONS

29. A person is guilty of an offence and liable to a fine of \$600 to \$6,600 who

- (1) refuses or neglects to comply with the order provided for in section 14;
- (2) uses or removes seized property or allows seized property to be used or removed, without the authorization of an inspector or judge; or
- (3) contravenes section 5, 6, 12 or 25 or a regulation made under section 4 or 27.

If the offence results in a high or imminent risk of spreading a harmful organism, the fine is \$1,000 to \$14,000.

30. A person who contravenes section 13 is guilty of an offence and liable to a fine of \$500 to \$5,000.

31. A person who hinders or attempts to hinder an inspection in any way is guilty of an offence and liable to a fine of \$600 to \$6,600.

32. A person who refuses to provide an inspector with information or a document the inspector is entitled to require, or conceals or destroys a document or property relevant to an inspection is guilty of an offence and liable to a fine of \$700 to \$8,400.

33. A person who knowingly gives false information to an inspector is guilty of an offence and liable to a fine of \$800 to \$10,400.

34. A person is guilty of an offence and liable to a fine of \$1,000 to \$14,000 who

(1) refuses or neglects to comply with the order provided for in section 24; or

(2) contravenes a regulation made under section 8.

35. For subsequent convictions, the fines provided for in sections 29 to 34 are doubled.

36. In determining the amount of the fine, the judge takes into account such factors as the revenues and other benefits the offender derived from the offence and its social and economic consequences.

37. If a legal person, partnership, association or body commits an offence under this Act or its regulations, any director, officer, employee, partner or mandatary of the legal person, partnership, association or body who directed, authorized, advised, consented to, acquiesced in or participated in the offence is a party to it and liable to the penalty prescribed for it, whether or not the legal person, partnership, association or body has been prosecuted or convicted.

38. A person who, by act or omission, assists another in committing an offence under this Act or its regulations or who advises, encourages or incites another person to commit it is a party to the offence and liable to the penalty prescribed for it.

39. Penal proceedings for an offence under this Act or its regulations are prescribed one year after the date on which the prosecutor became aware of the commission of the offence. However, no proceedings may be brought if more than five years have elapsed since the commission of the offence.

40. In proceedings instituted for an offence under this Act or its regulations, the inspection, analysis or sampling report and the minutes of the seizure or confiscation, signed by an inspector or an analyst designated by the Minister, are proof of their contents, unless there is evidence to the contrary, and no proof of the signature or of the quality of the signatory is required if the inspector or analyst certifies in the inspection, analysis or sampling report that the inspector personally observed the facts stated in the report.

The cost of inspection or analysis is included in the costs of the proceedings and may be claimed in the statement of offence.

CHAPTER VIII

REPEALING, TRANSITIONAL AND FINAL PROVISIONS

41. Division IV of the Agricultural Abuses Act (R.S.Q., chapter A-2) and the Plant Protection Act (R.S.Q., chapter P-39.01) are repealed.

42. The Act respecting prevention of disease in potatoes (R.S.Q., chapter P-23.1) is repealed, except sections 16 and 17 of that Act which remain in force until replaced or repealed in accordance with the second paragraph of section 44 of this Act.

43. The provisions of the Regulation respecting prevention of disease in potatoes, made by Order in Council 1304-88 (1988, G.O. 2, 3404), remain in force, to the extent they are compatible with this Act, until replaced or repealed by a regulation made under this Act.

44. The territories protected to prevent disease in potatoes and designated by Order in Council 860-88 (1988, G.O. 2, 3423, in French) are deemed to be protected crop zones designated under section 7 of this Act.

In addition, sections 16 and 17 of the Act respecting prevention of disease in potatoes and the provisions of the Regulation respecting prevention of disease in potatoes that apply to the protected territories are deemed to be phytosanitary measures determined under section 8 of this Act until a regulation is made under that section.

45. The diseases referred to in section 3 of the Act respecting prevention of disease in potatoes and the diseases and destructive insects designated by the Plant Protection Regulation, made by Order in Council 1366-96 (1996, G.O. 2, 4703), are deemed to be harmful organisms determined under section 4 of this Act until a regulation is made under that section.

46. Unless the context indicates otherwise and subject to the necessary modifications, a reference in any Act, regulation, order in council or statutory instrument to a provision of Division IV of the Agricultural Abuses Act, the Act respecting prevention of disease in potatoes or the Plant Protection Act is a reference to the corresponding provision of this Act.

47. Judicial proceedings brought under Division IV of the Agricultural Abuses Act, the Act respecting prevention of disease in potatoes or the Plant Protection Act before 12 June 2008 are continued under those Acts.

48. The Minister of Agriculture, Fisheries and Food is responsible for the administration of this Act.

49. This Act comes into force on 12 June 2008.

