

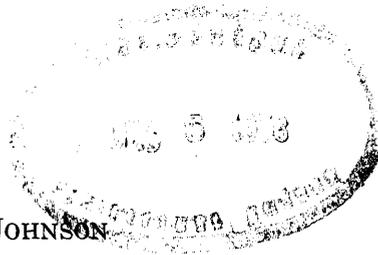
THIRD SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 110

**An Act to amend the Building Contractors
Vocational Qualifications Act and other legislation**

First reading
Second reading
Third reading



M. PIERRE MARC JOHNSON

Ministre du travail et de la main-d'oeuvre

L'ÉDITEUR OFFICIEL DU QUÉBEC

1 9 7 8

EXPLANATORY NOTES

This bill amends various labour acts. In particular, it submits amendments to the Building Contractors Vocational Qualifications Act, with the following as main objects:

- (a) to amend the composition of the board;*
- (b) to specify the conditions of obtaining a licence;*
- (c) to fix delays during which a licence cannot not be obtained in the case of bankruptcy, or of the taking part in a bankruptcy by certain natural persons involved in the undertaking;*
- (d) to submit any natural person who wishes to obtain a licence to the same conditions as those required of a person qualifying a partnership or corporation;*
- (e) to forbid any natural person to hold more than one licence, subject to the regulatory power of the board in that regard;*
- (f) to replace the kind of security presently provided for by the act and enable the board to require, by regulation, security from contractors carrying out or causing the carrying out of construction work related to a residential building; the board may, by regulation, set up an indemnity fund to replace that requirement for security;*
- (g) to make amendments to the present procedure of appeal;*
- (h) to exempt from the obligation to hold a licence, the owner-builder who causes part of the construction work contemplated in section 55 of the act to be carried out;*
- (i) to give the board additional regulatory powers;*
- (j) to create a new offence.*

This bill also submits amendments to the Construction Industry Labour Relations Act, particularly so as to:

(a) *exclude from its application certain construction work carried out by employees of school boards, colleges or health service or social service establishments;*

(b) *exempt the skilled tradesman from the application of the said act except for the purposes of complementary social benefits plans, to which he may contribute, on a voluntary basis, on certain conditions;*

(c) *change the composition of the Office de la Construction du Québec;*

(d) *clarify the prohibition of the right to strike and lock-out during a decree;*

(e) *enable the Lieutenant-Governor in Council to amend any regulation submitted to him by the board for approval.*

Moreover, this bill amends the Act to establish the Office de la construction du Québec and to again amend the Construction Industry Labour Relations Act for the purposes of enabling the Lieutenant-Governor in Council to amend the constitution and by-laws of the Association des entrepreneurs en construction du Québec in connection with certain matters, especially the election and composition of the board of directors, and of the executive committee, and the composition of the election committee and its internal management rules.

This bill provides that the Lieutenant-Governor in Council shall determine certain terms and conditions for the election of the board of directors to succeed to the first board of directors of the Association des entrepreneurs en construction du Québec.

Included in this bill are also concordance amendments to the Act to incorporate the Association of Building Contractors of Québec and certain provisions to determine the manner in which the term of office of the first board of directors will end.

Finally, this bill also makes concordance amendments to the Manpower Vocational Training and Qualification Act, in respect of the jurisdiction of that act over the skilled tradesman.

Sec. 1. *The expression "regulation" is presently defined as follows:*

“1. In this act, unless the context indicates a different meaning,
(g) “regulation” means a regulation made in conformity with this act by the board;”.

Sec. 2. *The object of the amendment submitted is to amend the composition of the board by adding thereto a member chosen from among the most representative employers' associations in the construction industry. The number of members is increased from eight to nine.*

Sec. 3. *The amendment submitted provides concordance with the preceding section of the bill.*

Bill 110

An Act to amend the Building Contractors Vocational Qualifications Act and other legislation

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

1. Section 1 of the Building Contractors Vocational Qualifications Act (1975, chapter 53) is amended by replacing paragraph *g* by the following paragraph:

“(g) “regulation” means a regulation made in conformity with this act by the board or the Lieutenant-Governor in Council;”.

2. Section 8 of the said act is amended:

(a) by replacing the first paragraph by the following paragraph:

“**8.** The board consists of nine members appointed by the Lieutenant-Governor in Council.”;

(b) by replacing the third paragraph by the following paragraph:

“The other six members shall be experienced contractors appointed for three years; they shall be designated among the persons proposed by the most representative associations of contractors in the construction industry. However, the Minister may require that other names be proposed to him.”

3. Section 9 of the said act is replaced by the following section:

“**9.** The six members contemplated in the third paragraph of section 8 shall sit without the right to vote except for the adop-

Sec. 4. *The amendment submitted adds the idea of "knowledge" to that of experience as a condition of obtaining a licence; the person wishing to obtain a licence must also have passed the examinations of the board.*

The amendment provides further for a prohibition, during a period of three years, for anyone applying for a licence or for any natural person wishing to qualify a partnership or corporation to obtain a licence, in any case of personal bankruptcy or of taking part in the bankruptcy of a partnership or corporation.

Sec. 5. *The object of the amendment submitted is to subject the natural person wishing to obtain a licence, to the same conditions as the natural person qualifying a partnership or corporation.*

In addition, it forbids any natural person to hold more than one licence, subject, however, to the regulatory power of the board as contemplated in section 13 of the bill.

tion of the constitution of the board and the regulations, and for the fixing by regulation of the duties exigible for the issue or renewal of licences."

4. Section 31 of the said act is replaced by the following section:

"31. To obtain a licence or to qualify a partnership or corporation to obtain a licence, a natural person must:

(a) prove to the board that he has the relevant knowledge or experience in the management of a construction undertaking and in the carrying out of construction work to warrant the trust of the public and that he has passed the examinations provided for by regulation;

(b) establish his solvency;

(c) be free of any conviction in respect of any offence contemplated in subparagraphs iv, v and vi of paragraph b of section 43 for the five years preceding the application;

(d) prove, if he was a bankrupt, that he has obtained his release after having complied with the conditions fixed by a court of competent jurisdiction;

(e) prove, if he was a member of a partnership within twelve months before the date of bankruptcy of that partnership, that more than three years have elapsed since that bankruptcy;

(f) prove, if he was a director or a shareholder holding twenty per cent or more of the voting shares of a corporation within twelve months before the date of bankruptcy of that corporation, that more than three years have elapsed since that bankruptcy."

5. Section 32 of the said act is amended:

(a) by replacing the first paragraph by the following paragraph:

"32. A natural person, to obtain a licence or qualify a partnership or a corporation to obtain a licence, must be of full age and have a knowledge of the French language appropriate to the work envisaged.";

(b) by adding the following paragraph:

"Subject to paragraph s of section 58, no natural person may hold more than one licence."

Sec. 6. *The object of the amendment proposed is to add to section 33 of the act the prohibition, during a period of three years, for any partnership or corporation, to obtain a licence where a member of the partnership, a director or a shareholder holding twenty per cent or more of the voting shares of the corporation has been involved in a bankruptcy.*

Sec. 7. *The amendment proposed repeats for concordance purposes the provisions of section 51 of the act. It also increases the powers of the board by enabling it to deliver sooner a licence to a person in a case of inability resulting from the committing of a criminal offence contemplated in subparagraph v of paragraph b of section 43 of the act.*

Section 51 presently reads as follows:

“51. Nevertheless, the board may issue a licence to a person earlier if the bankruptcy is not related to the activities contemplated by the licence and is not imputable to such person.”

6. Section 33 of the said act is replaced by the following section:

“33. A partnership or corporation must, to obtain a licence:

(a) qualify for it through one or more natural persons in accordance with section 30;

(b) establish its solvency or, in the case of a partnership, the solvency of each of its members;

(c) be free of any conviction in respect of any offence contemplated in subparagraphs iv, v and vi of paragraph b of section 43 for the five years preceding the application, the same requirement applying to the partners or the directors of the partnership or corporation, as the case may be;

(d) inform the board of its legal structure and of the name and domicile of each of its directors and of its shareholders holding twenty per cent or more of the voting shares of the corporation, or of each of its members, according as it is a corporation or a partnership;

(e) prove, in the case of a partnership, that none of its members was a member of another partnership or a director or a shareholder holding twenty per cent or more of the voting shares of a corporation, within twelve months before the date of bankruptcy of that partnership or corporation, unless more than three years have elapsed since that bankruptcy;

(f) prove, in the case of a corporation, that none of its directors or of its shareholders holding twenty per cent or more of the voting shares of the corporation was a member of a partnership within twelve months before the date of bankruptcy of that partnership, unless more than three years have elapsed since that bankruptcy; prove also that none of its directors or of its shareholders holding twenty per cent or more of the voting shares of the corporation was a director or a shareholder holding twenty per cent or more of the voting shares of another corporation within twelve months before the date of bankruptcy of the latter, unless more than three years have elapsed since that bankruptcy.”

7. The said act is amended by inserting, after section 33, the following section:

“33a. Where the inability to obtain a licence or to qualify a partnership or corporation for that purpose arises from any of the provisions contemplated in paragraph e or f of section 31 or 33, the board may, upon application, issue a licence to a person sooner if the bankruptcy is not related to the activities covered by the licence and cannot be attributed to that person.

Sec. 8. *The main object of the amendment proposed is to replace the kind of security presently provided for by the act and enable the board to require by regulation security from the building contractors carrying out or causing the carrying out of construction work related to a residential building.*

It also gives the board the power to set up, by regulation, an indemnity fund to replace such requirement for security.

*Finally, it maintains the present power of the board to require of every natural person, partnership or corporation applying for a licence, security payable to the *Ministre des finances* with a view to indemnifying clients in cases of fraud, or fraudulent misuse or misappropriation of funds.*

Where the inability to obtain a licence or to qualify a partnership or corporation for that purpose arises from the provisions contemplated in paragraph *c* of section 31 or 33 for an offence contemplated in subparagraph *v* of paragraph *b* of section 43, the board may authorize the issue of a licence sooner to a person who applies therefor. In order to render its decision, the board shall consider especially the character of the offence committed, its seriousness and its effect on the activities which the person applying for the licence intends to carry on in the construction industry.”

8. Section 34 of the said act is replaced by the following sections:

“**34.** The board may, by regulation, require security of every contractor who carries or causes the carrying out of construction work of a category established by regulation and related to a residential building contemplated by regulation. The security of the contractor guarantees the fulfilment of his obligations toward his clients, as determined by regulation and to the extent provided for therein.

It may also, by regulation, require security for such work in view of indemnifying the clients of the contractor to the extent provided for by regulation, in case of fraud, bankruptcy or insolvency on his part; the regulation may provide that such indemnification shall be made as the surety may choose, either by the payment of a sum of money or by the carrying out of the work.

The board shall, by regulation, determine the terms and conditions, amounts and form of such security.

Where the board is of opinion that it is expedient to replace such security, it may, by regulation, set up an indemnity fund for the same purposes and provide the terms and conditions of administration and use of that fund and, if necessary, the transitional terms and conditions governing the initial period of operation of the fund, taking account of the security already furnished under this section. The contractors shall then subscribe or otherwise contribute to the indemnity fund in the manner provided for by regulation.

• “**34a.** The board may, by by-law, require of any natural person, partnership or corporation applying for a licence, security payable to the Ministre des finances in order to indemnify his or its clients in the case of fraud, fraudulent misuse or misappropriation of funds committed in their regard by the contractor, the employees or agents of the contractor or, in the case of a partnership or corporation, by its members or directors. The terms

Sec. 9. *The amendment proposed enables the board, in the case of renewal of a licence, to provide, by regulation, cases of exemption from the examinations.*

Sec. 10. *The object of the amendment submitted is to add admendments to the present procedure of appeal. It provides especially that the appeal notice must be lodged with the board and contain the grounds of the appeal.*

Sec. 11. *The amendment proposed provides concordance with sections 4, 6 and 7 of the bill.*

Sec. 12. *The object of the amendment submitted is to exempt owner-builders carrying out by themselves part of the construction work contemplated in paragraphs a and b of section 55 of the act, from the obligation to hold a licence. Presently, only the owner-builder carrying out such construction work by himself benefits by the exemption.*

Sec. 13. *The amendment submitted is to replace the expression "fees" by "duties" and specifies that the investigation costs are included in such duties.*

and conditions, amount and form of such security and the manner in which it shall be used, shall be determined by regulation.”

9. Section 40 of the said act is amended by replacing the first paragraph by the following paragraph:

“**40.** Every licence expires one year after the date of its issue; it may be renewed on the conditions prescribed by regulation. The board may, by regulation, determine cases of exemption from the examinations contemplated in the first paragraph of section 31.”

10. Section 46 of the said act is replaced by the following section:

“**46.** Every interested person may appeal to the Court from any decision rendered by the board.

The appeal must be lodged within thirty days of the date of the rendering of the decision by a notice, filed in the office of the court and served on the board, stating:

- (a) the name and domicile of the appellant;
- (b) the date and nature of the decision of the board;
- (c) the grounds of the appeal;
- (d) the conclusions sought.”

11. Sections 50 and 51 of the said act are repealed.

12. Section 55 of the said act is replaced by the following section:

“**55.** Subject to the other requirements of this act, an owner-builder’s licence is not required of an individual who himself carries out, in whole or in part, construction work:

(a) in regard to a house intended for habitation by himself and his family exclusively, or

(b) in regard to works other than a dwelling intended for his personal use or that of his family and not contemplated by the Public Buildings Safety Act (Revised Statutes, 1964, chapter 149) or the Industrial and Commercial Establishments Act (Revised Statutes, 1964, chapter 150).”

13. Section 58 of the said act is amended:

- (a) by replacing paragraph *a* by the following paragraph:

It also grants the board additional regulatory powers which have become necessary pursuant to the amendments submitted in sections 4, 5, 8 and 9 of the bill.

Paragraphs a, c and l of section 58 presently read as follows:

“58. The board may make regulations:

(a) to determine the fees exigible for the issue and renewal of licences and the investigation costs payable by persons concerning whom an investigation has been made;

(c) to determine the qualifications required of a physical person qualifying a partnership or a corporation;

(l) to determine the cases where the categories of contractors indicated by it must furnish security when applying for a licence, fix the terms and conditions, the amounts and the form of the security exigible from the various categories of contractors, determine the cases where the board may declare the security forfeit and provide the manner in which it shall then be disposed of.”

Sec. 14. The amendment submitted is completely new law. It declares guilty of an offence every person using the name of another person who holds a licence or using the licence number of such person to carry out construction work or to have it carried out.

Sec. 15. The object of the amendment submitted is to amend the definition of the term “employee” so as to exclude the skilled tradesman therefrom. It also gives the definition of the term “skilled tradesman”.

“(a) to determine the duties exigible for the issue and renewal of licences and the investigation costs payable by persons concerning whom an investigation has been made;”;

(b) by replacing paragraph *c* by the following paragraph:

“(c) to determine the qualifications required of a natural person qualifying a partnership or a corporation and the conditions he must fulfil for such purpose and the information he must then furnish;”;

(c) by replacing paragraph *l* by the following paragraphs:

“(l) to determine the categories of construction work and residential buildings for the purposes of section 34;

“(m) to require security, for the purposes of the first paragraph of section 34, and determine the obligations it covers and to what extent they are so covered;

“(n) to require security, for the purposes of the second paragraph of section 34, and provide that the indemnification shall be made as the surety may choose, either by the payment of a sum of money or by the carrying out of the work;

“(o) to determine the terms and conditions, amounts and form of the security contemplated in section 34;

“(p) to establish an indemnity fund as contemplated in the fourth paragraph of section 34 and determine the manner in which the contractors must subscribe or contribute to it;

“(q) to require security for the purposes of section 34*a* and determine its terms and conditions, amount, form and the manner in which it is to be used;

“(r) to require every applicant for a contractor’s licence or, in the case of a partnership or corporation, every qualifying person, to pass examinations, to determine the content of such examinations and the conditions of admission to or exemption from them, and provide which cases of renewal of a licence entail exemption from those examinations;

“(s) to determine the cases where a natural person may hold more than one licence.”

14. Section 66 of the said act is amended by adding at the end the following paragraph:

“(e) uses the name of another person holding a licence or uses the licence number of that person to carry out or cause the carrying out of construction work.”

15. Section 1 of the Construction Industry Labour Relations Act (1968, chapter 45), amended by section 1 of chapter 35

Paragraph q of section 1 of the Construction Industry Labour Relations Act presently reads as follows:

“(q) “employee”: any apprentice, unskilled labourer or workman, skilled workman, journeyman, artisan, clerk or employee, working individually or in a crew or in partnership;”.

Sec. 16. The object of the amendment submitted is to change the composition of the board by increasing the number of members from three to five. It provides, further, that the chairman is the general manager.

Sec. 17. The object of the amendment submitted is to exclude from the application of the act certain construction work carried out by employees of school boards, colleges or health service or social service establishments.

It provides further that the skilled tradesman is no longer subject to the act except for the purposes of complementary social benefits plans.

of the statutes of 1970, by section 1 of chapter 46 of the statutes of 1971, by section 1 of chapter 28 of the statutes of 1973 and by section 1 of chapter 51 and section 12 of chapter 19 of the statutes of 1975, is again amended:

(a) by replacing paragraph *q* by the following paragraph:

“(q) “employee”: any apprentice, unskilled labourer or workman, skilled workman, journeyman or clerk working for an employer and entitled to wages;”;

(b) by adding, after paragraph *s*, the following paragraph:

“(t) “skilled tradesman”: a natural person operating on his own account who, by himself, carries out construction work for other persons, without the assistance of employees.”

16. Section 1c of the said act, enacted by section 2 of chapter 51 of the statutes of 1975, is amended:

(a) by replacing subsection 1 by the following subsection:

“(1) The board shall consist of five members, one of whom shall be the chairman, appointed for not more than five years by the Lieutenant-Governor in Council, who shall fix their salary and conditions of employment. The chairman shall hold office on a full-time basis; he is also general manager of the board.”;

(b) by replacing subsection 5 by the following subsection:

“(5) Three members, one of whom is the chairman, constitute a quorum of the board. The chairman shall have a casting vote.”;

(c) by striking out subsection 6.

17. Section 2 of the said act, replaced by section 2 of chapter 35 of the statutes of 1970 and amended by section 2 of chapter 28 of the statutes of 1973, is again amended:

(a) by adding after paragraph 7 the following paragraph:

“(8) maintenance, renovation, repair and alteration work done by employees of the school boards and colleges contemplated in the Act respecting the organization of the management and union parties in view of collective bargaining in the sectors of education, social affairs and government agencies (1978, chapter *insert here the chapter number of Bill 55*) and by the employees of the public establishments contemplated in the Act respecting health services and social services (1971, chapter 48).”;

(b) by adding after paragraph 8 the following paragraph:

“It applies also to the skilled tradesman but only for the purposes of subsection 4 of section 32s.”

Sec. 18. *The amendment submitted clarifies the prohibition of the right to strike and lock-out during a decree.*

Sec. 19. *The object of the amendment submitted is to strike out the expression "contracting artisan" from paragraph g of section 32 c of the act which presently reads as follows:*

"(g) by demand in writing made to any employer or contracting artisan, require that a copy it sends to him of the scale of wages rendered obligatory, or of any decision or regulation, be posted up and kept posted up in a suitable place and in the manner prescribed in the demand;"

Sec. 20. *The amendment submitted provides concordance with section 17 of the bill. It provides that the skilled tradesman may contribute on a voluntary basis to the complementary social benefits plans, on certain conditions.*

It provides further that the terms and conditions for the participation of the skilled tradesman are determined by regulation of the Office de la construction du Québec.

Sec. 21. *The object of the amendment proposed is to enable the Lieutenant-Governor in Council to amend any regulation the board submits to its approval.*

Section 58 of the act presently reads as follows:

58. The Lieutenant-Governor in Council may make any regulation deemed necessary to give effect to the provisions of this act. He may also make any regulation authorizing the board to use for its administration part of the sums collected by it as fringe benefits, and part or the whole of the funds or interest

18. Section 12 of the said act, replaced by section 6 of chapter 28 of the statutes of 1973 and by section 5 of chapter 51 of the statutes of 1975, is amended by replacing the second paragraph by the following paragraph:

“Strikes or lock-outs are permitted from the expiry date of the decree unless the dispute is referred to a council of arbitration.”

19. Section 32*c* of the said act, enacted by section 2 of chapter 46 of the statutes of 1971 and amended by section 16 of chapter 51 of the statutes of 1975, is again amended by replacing paragraph *g* by the following paragraph:

“(g) by demand in writing made to any employer, require that a copy it sends to him of the scale of wages rendered obligatory, or of any decision or regulation, be posted up and kept posted up in a suitable place and in the manner prescribed in the demand;”.

20. Section 32*s* of the said act, enacted by section 15 of chapter 19 of the statutes of 1975, is amended by adding the following subsection:

“(4) A skilled tradesman may participate in and contribute to a complementary social benefits plan for a maximum of forty working hours per week. He thereby assumes the obligations provided in the decree as regards assessments and contributions to that plan.

The board shall, by regulation, establish the terms and conditions of participation of skilled tradesmen in complementary social benefits plans. The skilled tradesman shall supply, along with his assessment and contribution, the following information: his surname, given name and address, his social security number, the number of the licence issued to him under the Building Contractors Vocational Qualifications Act (1975, chapter 53), how many hours he works in a week, the nature of his work, the names of the persons who have hired his services and such other information as prescribed by regulation of the Office.”

21. Section 58 of the said act, amended by section 17 of chapter 28 of the statutes of 1973 and by section 30 of chapter 51 of the statutes of 1975, is replaced by the following section:

“**58.** The Lieutenant-Governor in Council may make any regulation deemed necessary to give effect to this act.

He may make any regulation to authorize the board to use for its administration part of the sums it collects as social benefits

Sec. 25. The object of the amendment submitted is to amend the manner in which the first board of directors of the Association des entrepreneurs en construction du Québec ends. It takes into account section 23 of the bill.

Sec. 26 and 27. The amendments submitted provide concordance with sections 15 and 17 of the bill.

amend the Construction Industry Labour Relations Act (1975, chapter 51) by order in council 145-76, dated 21 January 1976 and amended, where that is the case, by section 33*a* of the said act; however, any amendment to the constitution and by-laws does not come into force until approved with or without amendment by the Lieutenant-Governor in Council.”

25. Section 5 of the said act is amended by replacing the second paragraph by the following paragraph:

“Their term of office expires on the beginning of the term of office of the directors determined under section 33*b* of the said act.”

26. Section 1 of the Manpower Vocational Training and Qualification Act (1969, chapter 51) is amended by adding after paragraph *s* the following paragraph:

“(*t*) “skilled tradesman”: a natural person who, operating on his own account, carries on a trade or vocation.”

27. Section 42 of the said act is amended by adding the following paragraph:

“No skilled tradesman may carry on a trade or vocation contemplated in paragraph *b* of section 30 unless he has obtained the certificate of qualification required to carry on that trade or vocation.”

28. This act comes into force on the day of its sanction, except sections 15 and 16, paragraph *b* of section 17 and sections 19, 20, 26 and 27, which will come into force on the date to be fixed by proclamation of the Government.