



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 126
(2010, chapter 39)

An Act to tighten the regulation of educational childcare

Introduced 4 November 2010
Passed in principle 23 November 2010
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EXPLANATORY NOTES

This Act introduces various measures to tighten the regulation of educational childcare.

To that end, the conditions that apply to the directors of a legal person who holds a day care centre permit are made applicable to the legal person's shareholders. The Minister of Families is granted the power to suspend, revoke or refuse to renew a day care centre permit if shares that carry 10% or more of the voting rights in the legal person who holds the permit have been transferred. Moreover, stricter conditions are introduced for the issue and maintenance of day care centre permits.

Certain limitations are introduced with respect to the services provided by the same childcare provider. The maximum number of facilities in which a childcare centre may provide educational childcare is set at five. The number of day care centre permits that may be issued to the same person, or to related persons, for the delivery of subsidized childcare is also limited to five. Moreover, the maximum number of subsidized childcare spaces that may be granted to the same permit holder, or to permit holders who are related persons, is set at 300.

Under the new provisions, the Minister of Families is to determine needs and priorities in the area of subsidized childcare spaces after consulting with the advisory committee concerned, the make-up and functions of which are defined in the Educational Childcare Act. The Minister is to allocate subsidized spaces on the recommendation of the advisory committee and consult the advisory committee before re-allocating subsidized spaces. Furthermore, all recommendations of advisory committees are to be made public by the Minister.

As well, a regime of administrative penalties is established for permit holders or recognized home childcare providers who contravene certain provisions of the Act or the regulations, subject to their right to contest the imposition of a penalty before the Administrative Tribunal of Québec.

The new legislation also doubles the fines that may be imposed on other persons who offer or provide childcare services in contravention of the law. Lastly, it provides that administrative

measures may be taken against them, including an order prohibiting them from offering or providing childcare under conditions that could compromise the health or safety of the children.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (R.S.Q., chapter C-52.2);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Educational Childcare Act (R.S.Q., chapter S-4.1.1).

REGULATION AMENDED BY THIS ACT:

- Educational Childcare Regulation (R.R.Q., chapter S-4.1.1, r. 2).

Bill 126

AN ACT TO TIGHTEN THE REGULATION OF EDUCATIONAL CHILDCARE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

EDUCATIONAL CHILDCARE ACT

1. Section 3 of the Educational Childcare Act (R.S.Q., chapter S-4.1.1) is amended

(1) by inserting “, directly or indirectly,” before “holds” in subparagraph *d* of paragraph 2;

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

“(3) a natural person who, directly or indirectly, holds voting shares of a legal person not listed on a Canadian stock exchange is a shareholder.”

2. Section 6 of the Act is amended by inserting “, personally or through another,” after “No person may”.

3. Section 8 of the Act is amended

(1) by replacing “one or more” in paragraph 1 by “a maximum of five”;

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

“However, in exceptional circumstances, the Minister may authorize the holder of a childcare centre permit to provide educational childcare in more than five facilities.”

4. Section 17 of the Act is amended

(1) by inserting “or shareholder” after “director” in the first paragraph;

(2) by inserting “or new shareholder” after “director” in the second paragraph.

5. The Act is amended by inserting the following section after section 25:

“25.1. A permit holder may not entrust the administration or management of the permit holder’s facility to a third party who is a legal person.”

6. Section 26 of the Act is amended

(1) by replacing “or a director of the applicant” in paragraphs 2 and 3 by “or a director or a shareholder of the applicant”;

(2) by replacing paragraph 4 by the following paragraph:

“(4) the applicant or a director or a shareholder of the applicant was convicted of an offence under section 6 in the two years preceding the application or, in the case of a second or subsequent offence, in the five years preceding the application;”;

(3) by replacing paragraph 5 by the following paragraph:

“(5) the applicant or a director or a shareholder of the applicant held a permit that was revoked or not renewed under paragraph 4 or 5 of section 28 in the five years preceding the application;”;

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

“(5.1) the applicant or a director or a shareholder of the applicant was convicted of an offence under section 108.2 in the five years preceding the application;”.

7. The Act is amended by inserting the following section after section 28:

“28.1. When shares that carry 10% or more of the voting rights in a legal person holding a day care centre permit are transferred, the Minister may suspend, revoke or refuse to renew the permit of the permit holder if the new shareholder

(1) meets the description of paragraph 4, 5 or 5.1 of section 26;

(2) is the holder of another day care centre permit in relation to which the Minister has cancelled or reduced the subsidy or suspended payment in whole or in part under section 97; or

(3) already holds shares that carry 10% or more of the voting rights in another legal person holding a day care centre permit in relation to which the Minister has cancelled or reduced the subsidy or suspended payment in whole or in part under section 97.

The Minister must suspend, revoke or refuse to renew the permit for any of the reasons set out in subparagraphs 1 to 3 of the first paragraph if a transfer of shares by the shareholder was effected through two or more transactions which resulted in the evasion of this section.”

8. The Act is amended by inserting the following division after section 81:

“DIVISION V

“ORDERS

“**81.1.** If a statement of offence is served on a person who offers or provides childcare services in contravention of section 6, the Minister or a person authorized by the Minister must, if of the opinion that the health or safety of the children may have been or could be compromised, issue an order prohibiting the person concerned from offering or providing childcare under conditions that could compromise the health or safety of the children.

“**81.2.** On issuing the order, the Minister or the person authorized by the Minister must notify it to the person concerned and inform the person of his or her right to contest it before the Administrative Tribunal of Québec within 60 days.”

9. Section 93 of the Act is amended by replacing the first paragraph by the following paragraphs:

“**93.** The Minister determines the number of subsidized childcare spaces annually. After determining needs and priorities, the Minister allocates the spaces among permit applicants, permit holders and home childcare coordinating offices.

Before allocating new spaces, the Minister determines needs and priorities after consulting with the advisory committee concerned established under section 101.1. The Minister allocates the spaces according to those needs and priorities and on the recommendation of the advisory committee.

Before allocating new spaces in Native communities, the Minister consults those communities only.”

10. The Act is amended by inserting the following sections after section 93:

“**93.1.** In no case may a childcare centre permit holder be allocated more than 300 subsidized childcare spaces.

The same applies to a person who holds two or more day care centre permits or related persons who hold two or more day care centre permits.

“**93.2.** In no case may the same person, or related persons, hold more than five day care centre permits for the delivery of subsidized childcare.”

11. Section 94 of the Act is amended

(1) by inserting “, after consulting with the advisory committee concerned established under section 101.1” after “may” in the first paragraph;

(2) by striking out “Likewise,” at the beginning of the second paragraph.

12. The Act is amended by inserting the following section after section 94:

“94.1. A day care permit applicant who is a legal person having obtained the authorization of the Minister to develop subsidized childcare spaces may not, except for exceptional reasons and with the Minister’s authorization, enter into an agreement concerning the sale or transfer of all or some of the legal person’s shares to a new shareholder or concerning the amalgamation, consolidation or merging of the legal person with another legal person before the issue of its permit.

A person who acts for a third party or for a legal person before it is constituted may not obtain the authorization of the Minister to develop subsidized childcare spaces.”

13. The Act is amended by inserting the following section after section 94.1:

“94.2. Before allocating new subsidized childcare spaces or re-allocating subsidized childcare spaces, the Minister makes public the recommendations of the advisory committees established under section 101.1.”

14. The Act is amended by inserting the following after section 101:

“DIVISION III

“SPACE ALLOCATION ADVISORY COMMITTEE

“101.1. The Minister creates an advisory committee for every territory the Minister determines.

The functions of each committee are

(1) to advise the Minister on the needs and priorities with respect to the allocation of new spaces;

(2) to analyze all proposed projects and making recommendations to the Minister on the allocation of new spaces; and

(3) to advise the Minister before the Minister re-allocates spaces under the first paragraph of section 94.

“101.2. Each committee is composed of five members, as follows:

(1) one person designated by the regional conference of elected officers;

(2) one person designated by the health and social services agency;

- (3) one person designated by the school boards in the territory concerned;
- (4) one person designated by the body most representative of the childcare centres in the territory concerned; and
- (5) one person designated by the body most representative of the day care centres in the territory concerned which provide subsidized childcare.

The persons designated under subparagraphs 4 and 5 of the first paragraph must work or reside in the territory of the advisory committee concerned.

The Minister may also ask up to two other bodies, including a family community body, to designate one other person each to sit on the committee.

“CHAPTER VII.1

“ADMINISTRATIVE PENALTIES

“101.3. A person designated by the Minister for that purpose may impose an administrative penalty on a permit holder or a recognized home childcare provider after ascertaining that the permit holder or recognized home childcare provider has failed to comply with any of the provisions of sections 78, 86 and 86.1.

The designated person may also impose an administrative penalty after ascertaining that a permit holder has failed to comply with a non-compliance notice given under section 65 with respect to the contravention of any of sections 13, 14, 16 and 20.

The amount of the administrative penalty is \$500.

“101.4. The Government may provide, in a regulation under this Act, that a failure to comply with a provision of the regulation may result in an administrative penalty being imposed by the person designated by the Minister. Such a regulation may also specify, or give the calculation methods to be used to determine, the amount of the administrative penalty, which may vary according to the degree to which standards have been infringed.

The amount of such an administrative penalty may not exceed the amount set out in section 101.3.

“101.5. If a failure to comply for which an administrative penalty is imposed continues for more than one day, it constitutes a new failure to comply for each day it continues.

“101.6. The administrative penalty imposed on a person may not be in addition to penal proceedings instituted against the person for a contravention of the same provision and on the basis of the same facts.

“101.7. The imposition of an administrative penalty is prescribed one year after the date of the failure to comply.

“101.8. The person designated by the Minister imposes an administrative penalty on a person by notification of a notice stating the amount of the administrative penalty, the reasons it is imposed, and the right of the party concerned to have the matter reviewed by the Minister and, subsequently, to contest the matter before the Administrative Tribunal of Québec. The notice must also include information on the procedure for recovery of the amount owing, in particular with regard to a possible deduction from any future subsidies in accordance with section 100 or to the issue of a recovery certificate under section 101.15 and its effects.

The amount owing bears interest at the rate determined under section 28 of the Act respecting the Ministère du Revenu (chapter M-31), from the 30th day after notification of the notice.

Prescription is interrupted as of the date of notification of the notice.

“101.9. The person concerned may apply for a review of the decision, in writing, within 30 days after notification of the notice.

“101.10. The Minister designates the persons responsible for reviewing decisions with regard to the imposition of administrative penalties. They must not come under the same administrative authority as the person imposing administrative penalties.

“101.11. After giving the person concerned an opportunity to submit observations and produce documents to complete the record, the person responsible for reviewing the decision renders a decision on the basis of the record. The person may confirm, quash or vary the decision under review.

“101.12. The application for review must be dealt with promptly. If the review decision is not rendered within 30 days after receipt of the application or, as applicable, of the expiry of the time requested by the applicant to submit observations or produce documents, any interest on the administrative penalty is suspended pending the decision.

“101.13. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state that the applicant may contest the decision before the Administrative Tribunal of Québec.

“101.14. The Minister may enter into an agreement with the person for payment of the amount owing as an administrative penalty. Such an agreement, or the payment of an amount owing, does not constitute, for the purpose of penal proceedings, a recognition of the facts giving rise to it.

“101.15. If the administrative penalty is not paid or the agreement entered into for payment of the administrative penalty is not adhered to, the Minister may, at the expiry of the time for applying for a review of the decision, of the time for contesting the review decision before the Administrative Tribunal of Québec or of 30 days after the decision of the Tribunal confirming all or part of the Minister’s decision, either issue a recovery certificate or make a deduction from any future subsidies in accordance with section 100.

However, a recovery certificate may be issued or a deduction made before the expiry of the time referred to in the first paragraph if the Minister believes that the debtor is attempting to evade payment.

A recovery certificate must state the debtor’s name and address and the amount of the debt.

“101.16. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Act respecting the Ministère du Revenu (chapter M-31), be withheld for payment of the amount due shown on the certificate.

The withholding of a refund under the first paragraph interrupts prescription.

“101.17. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

“101.18. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by government regulation.

“101.19. The Minister may, by agreement, delegate to another department or body all or some of the powers relating to the recovery of administrative penalties owing to the Minister under this Act or the regulations.

“101.20. The Minister keeps a register concerning the administrative penalties imposed on persons under this Act or the regulations.

The register must contain the following information:

- (1) the date the administrative penalty was imposed;
- (2) the nature of the failure for which the administrative penalty was imposed, and the date and place it occurred and, if applicable, the name of the facility;
- (3) if the offender is a legal person, the person’s name and address;

(4) if the offender is a natural person, the person's name and the name of the municipality in whose territory the person resides;

(5) the amount of the administrative penalty; and

(6) any other information the Minister considers to be of public interest.

The information contained in the register is public information. However, it may not be made public until the expiry of the time for applying for a review of the decision, of the time for contesting the review decision before the Administrative Tribunal of Québec, or of 30 days after the final decision of the Tribunal confirming all or part of the review decision, as applicable.”

15. The Act is amended by inserting the following sections after section 105:

“**105.1.** An order made under section 81.1 by the Minister or a person authorized by the Minister may be contested by the person concerned before the Administrative Tribunal of Québec within 60 days after notification of the order.

“**105.2.** A review decision rendered by a person designated by the Minister which confirms the imposition of an administrative penalty under this Act or the regulations may be contested by the person concerned before the Administrative Tribunal of Québec within 60 days after notification of the review decision.

When rendering its decision, the Administrative Tribunal of Québec may make a ruling with respect to interest accrued on the administrative penalty while the matter was pending before the Tribunal.”

16. Section 106 of the Act is amended by adding the following paragraphs after paragraph 30:

“(31) specify which provisions of a regulation give rise to the imposition of an administrative penalty, and specify, or give the calculation methods to be used to determine, the amount of the penalty;

“(32) determine the cases in which and the conditions under which a debtor is required to pay a recovery charge for an administrative penalty and prescribe the amount of the charge.”

17. The Act is amended by inserting the following sections at the beginning of Chapter XI:

“**103.1.** A person that contravenes section 6 is guilty of an offence and is liable to a fine of \$1,000 to \$10,000.

“108.2. A person named in an order issued under section 81.1 that, at any time in the two years following notification of the order or a conviction under this section, refuses or fails to comply with the order or in any way prevents or hinders its execution is guilty of an offence and is liable to a fine of \$5,000 to \$50,000.”

18. Section 109 of the Act is amended by striking out “6.”.

19. Sections 118 and 119 of the Act are amended by replacing “109” by “108.1”.

20. Section 120 of the Act is amended

(1) by inserting “at the expense of the person in charge of the facility” after “immediately”;

(2) by inserting “even” before “before”;

(3) by replacing “109” at the end by “108.1”;

(4) by adding the following paragraph:

“The Minister must, in the same manner, have the children evacuated if the Minister considers that their health and safety may have been or could be compromised.”

ACT RESPECTING THE FORFEITURE, ADMINISTRATION AND APPROPRIATION OF PROCEEDS AND INSTRUMENTS OF UNLAWFUL ACTIVITY

21. Schedule 1 to the Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity (R.S.Q., chapter C-52.2) is amended by inserting the following in alphabetical order:

“— Educational Childcare Act (chapter S-4.1.1), but only as regards offences under sections 108.1 and 108.2 of that Act;”.

ACT RESPECTING ADMINISTRATIVE JUSTICE

22. Section 119 of the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting the following paragraph after paragraph 5:

“(5.0.1) a proceeding under section 105.1 of the Educational Childcare Act (chapter S-4.1.1) which pertains to an order prohibiting a person from offering or providing childcare services under conditions that could compromise the health or safety of the children;”.

23. Section 3 of Schedule I to the Act is amended by replacing “section 104” in paragraph 8 by “section 104, 105.1 or 105.2”.

EDUCATIONAL CHILDCARE REGULATION

24. Section 2 of the Educational Childcare Regulation (R.R.Q., chapter S-4.1.1, r. 2) is amended

(1) by inserting “and its shareholders,” after “directors” in the first paragraph;

(2) by inserting “or shareholder” after “director” in the second paragraph;

(3) by replacing “if the applicant maintains his or her application” in the second paragraph by “if he or she maintains his or her candidacy or interest”.

25. Section 6 of the Regulation is amended by replacing the second paragraph by the following paragraph:

“In the case of a change of director or shareholder, a permit holder must, within 60 days of the change, provide one of the attestations referred to in section 2 in respect of the new director or the new shareholder.”

26. Section 10 of the Regulation is amended by inserting “or shareholder” after “director” in paragraph 11.

27. Section 11 of the Regulation is amended

(1) by inserting “and each shareholder” after “board of directors” in paragraph 4;

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

“(5) the name and the address of the residence of each related person who is a permit holder.”

28. Section 51 of the Regulation is amended by adding the following paragraph at the end:

“(11) show that the natural person was not convicted of an offence under section 108.2 of the Act during the two years preceding the application.”

29. The Regulation is amended by inserting the following after section 123:

“CHAPTER IV.1

“ADMINISTRATIVE PENALTIES

“**123.1.** A person designated by the Minister for that purpose may impose an administrative penalty after ascertaining that a permit holder has failed to

comply with a non-compliance notice issued under section 65 of the Act for a contravention of any of sections 6, 21, 30 to 43 and 100 to 121.

The amount of the administrative penalty is \$250.”

TRANSITIONAL AND FINAL PROVISIONS

30. Despite paragraph 1 of section 8 of the Educational Childcare Act (R.S.Q., chapter S-4.1.1), amended by section 3, a childcare centre may provide educational childcare solely in the facilities stated on its permit issued before 10 December 2010 or the facilities authorized by the Minister before that date.

31. Section 28.1 of that Act, enacted by section 7, applies to a transfer of shares in a legal person holding a day care centre permit that occurs on or after 4 November 2010.

32. Despite section 93.1 of the Educational Childcare Act, enacted by section 10, a person who holds one or more permits, or permit holders who are related persons, may keep the subsidized childcare spaces stated on those permits issued before 4 November 2010, or the spaces authorized by the Minister before that date, subject to an examination of the legality of the granting of those subsidized childcare spaces.

However, a legal person who holds two or more permits may not keep the spaces described in the first paragraph if an agreement is entered into concerning the sale or transfer of all or some of the legal person’s shares to a new shareholder or concerning the amalgamation, consolidation or merger of the legal person with another legal person.

33. Despite section 93.2 of the Educational Childcare Act, enacted by section 10, a permit holder, or permit holders who are related persons, may keep the day care centre permits issued before 4 November 2010, or the day care centre permits for subsidized childcare spaces authorized by the Minister before that date, subject to an examination of the legality of the granting of those subsidized childcare spaces.

However, a legal person who holds permits described in the first paragraph may not keep the permits described in the first paragraph if an agreement is entered into concerning the sale or transfer of all or some of the legal person’s shares to a new shareholder or concerning the amalgamation, consolidation or merger of the legal person with another legal person.

34. This Act comes into force on 10 December 2010, except section 14 to the extent that it enacts sections 101.3 to 101.20 of the Educational Childcare Act, sections 15 and 23 to the extent that they refer to section 105.2 of that Act, and section 29, which come into force on the date or dates to be set by the Government, which date or dates may not be after 15 October 2011.

