



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 10
(2013, chapter 3)

**An Act to provide for the provisional
relief from office of an elected municipal
officer**

**Introduced 15 November 2012
Passed in principle 29 November 2012
Passed 28 March 2013
Assented to 9 April 2013**

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EXPLANATORY NOTES

This Act introduces a measure that allows the Superior Court, on a motion by a municipality, a municipal elector or the Attorney General, to declare provisionally incapable to perform any duty of office a member of the council of the municipality against whom proceedings have been brought for an offence under an Act of the Parliament of Québec or Canada that is punishable by a term of imprisonment of two years or more.

Provisional incapacity may be declared if the court considers it warranted in the public interest in view of the connection between the alleged offence and the council member's duties and the extent to which that offence is likely to discredit the administration of the municipality. The council member may ask the court to put an end to the provisional incapacity if it considers it warranted in view of the fact that the proceedings on which the provisional incapacity motion was based were substantially modified.

This Act contains rules for the cessation of the provisional incapacity.

It provides that the municipality's obligation to assume the defence costs of council members applies when a provisional incapacity motion is brought against a council member.

A council member found guilty of the offence alleged in the proceedings on which a provisional incapacity motion was based must reimburse the municipality for expenses paid for council member's defence against the motion. In such case, the council member must also repay to the municipality and any mandatory body of the municipality or supramunicipal body any sum received as remuneration or an allowance under the Act respecting the remuneration of elected municipal officers for the period during which the council member was forced to cease performing any duty of office. Moreover, the council member also loses the right to any severance allowance or transition allowance under that Act, and any such sums already received must be repaid to the municipality, except if they were received before the beginning of the term during which the council member was forced to cease performing any duty of office. Any benefits accrued to the council member under a pension plan

will be adjusted to take into account the period during which the council member was forced to cease performing any duty of office.

This Act provides that the Minister of Municipal Affairs, Regions and Land Occupancy may set up a program to provide financial support to any elector who has brought or intends to bring a provisional incapacity motion against a council member.

Lastly, it provides that proceedings brought before the date of coming into force of the new measure may serve as the basis for a provisional incapacity motion.

LEGISLATION AMENDED BY THIS ACT:

- Cities and Towns Act (chapter C-19);
- Municipal Code of Québec (chapter C-27.1);
- Act respecting elections and referendums in municipalities (chapter E-2.2);
- Act respecting the Pension Plan of Elected Municipal Officers (chapter R-9.3).

Bill 10

AN ACT TO PROVIDE FOR THE PROVISIONAL RELIEF FROM OFFICE OF AN ELECTED MUNICIPAL OFFICER

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CITIES AND TOWNS ACT

1. Section 56 of the Cities and Towns Act (chapter C-19) is amended by adding the following sentence at the end of the second paragraph: “When the inability results from a provisional incapacity declared under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2), the acting mayor shall have and exercise all the powers conferred on the mayor, despite the fourth paragraph of section 53 and any inconsistent legislative provision contained in the charter of a municipality governed in part by this Act.”

2. Section 604.6 of the Act is amended by adding the following subparagraph after subparagraph 2 of the first paragraph:

“(3) assume the defence of a member of the council against whom a motion has been brought under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2).”

3. Section 604.7 of the Act is amended by adding the following sentence at the end of the third paragraph: “They do not apply in the case provided for in subparagraph 3 of the first paragraph of section 604.6.”

MUNICIPAL CODE OF QUÉBEC

4. Article 711.19.1 of the Municipal Code of Québec (chapter C-27.1) is amended by adding the following subparagraph after subparagraph 2 of the first paragraph:

“(3) assume the defence of a member of the council against whom a motion has been brought under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2).”

5. Article 711.19.2 of the Code is amended by adding the following sentence at the end of the third paragraph: “They do not apply in the case provided for in subparagraph 3 of the first paragraph of article 711.19.1.”

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

6. The Act respecting elections and referendums in municipalities (chapter E-2.2) is amended by inserting the following after section 312:

“CHAPTER IX.1

“PROVISIONAL INCAPACITY

“**312.1.** The Superior Court may, on a motion, if it considers it warranted in the public interest, declare provisionally incapable to perform any duty of office a member of the council of a municipality against whom proceedings have been brought for an offence under an Act of the Parliament of Québec or Canada that is punishable by a term of imprisonment of two years or more.

The motion may be brought by the municipality, the Attorney General or any of the municipality’s electors. It is heard and decided by preference. Notice of the motion is given to the Director of Criminal and Penal Prosecutions and to any other authority responsible for the proceedings on which the motion is based, so that they may make representations concerning any order needed to protect the right to a fair trial in the context of those proceedings.

To assess whether it is warranted in the public interest, the court considers the connection between the alleged offence and the council member’s duties and the extent to which the alleged offence is likely to discredit the administration of the municipality.

“**312.2.** The court may not declare the council member provisionally incapable if the motion is based on proceedings brought before the polling day for the most recent election in which the council member was declared elected or, as applicable, before the day on which the council member was declared elected under section 168 in that election.

“**312.3.** No appeal lies from the judgment.

“**312.4.** The provisional incapacity ceases on the first of the following dates:

(1) the date on which the prosecutor stays or withdraws all charges in the proceedings on which the motion was based;

(2) the date of a judgment of acquittal or a stay of proceedings in respect of all such charges; and

(3) the date on which the council member’s term that was in progress on the date of the judgment ends in accordance with the provisions of this Act.

“312.5. On a motion by the council member, the Superior Court may put an end to the provisional incapacity if it considers it warranted in view of the fact that the proceedings on which a provisional incapacity motion was based were substantially modified.

It is heard and decided by preference.

“312.6. If found guilty, by a judgment that has become final, of the offence alleged in the proceedings on which the judgment declaring him provisionally incapable was based, the council member must repay to the municipality and any mandatory body of the municipality or supramunicipal body any sum received as remuneration or an allowance under the Act respecting the remuneration of elected municipal officers (chapter T-11.001) for the period during which he was forced to cease performing any duty of office. The council member also loses the right to any severance allowance or transition allowance under that Act for the period prior to the finding of guilty and any such sums already received must be repaid to the municipality, except if they were received before the beginning of the term during which the council member was forced to cease performing any duty of office.

The council member must also reimburse the municipality for any expenses paid in the context of the defence of the council member against a provisional relief motion brought under subparagraph 3 of the first paragraph of section 604.6 of the Cities and Towns Act (chapter C-19) or subparagraph 3 of the first paragraph of article 711.19.1 of the Municipal Code of Québec (chapter C-27.1).

“312.7. The Minister of Municipal Affairs, Regions and Land Occupancy may set up a program to provide financial support to any elector who has brought or intends to bring a motion under the second paragraph of section 312.1.”

7. Section 317 of the Act is amended by adding “or by reason of the existence of a judgment declaring him provisionally incapable under section 312.1” at the end of the fourth paragraph.

ACT RESPECTING THE PENSION PLAN OF ELECTED MUNICIPAL OFFICERS

8. The Act respecting the Pension Plan of Elected Municipal Officers (chapter R-9.3) is amended by inserting the following after the heading of Chapter XII:

“DIVISION 0.1

“MISCELLANEOUS PROVISIONS

“76.7. Despite any provision to the contrary in this Act or in any of the supplementary benefits plans established under sections 76.4 and 80.1, a council member who, by a judgment that has become final, was found guilty of an

offence alleged in proceedings that served as a basis for a motion referred to in section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2) is deemed not to have participated in this plan during the period the council member was forced, in accordance with the judgment rendered under that section, to cease performing any duty of office. That period cannot be credited for the purposes of this plan.

The pension of the council member is recomputed, if necessary, as a result of the application of the first paragraph. Despite section 147.0.1 of the Act respecting the Government and Public Employees Retirement Plan (chapter R-10), the Commission may, not later than the date occurring 24 months after the date on which the judgment became final, adjust downwards the amount of a pension already in payment in order to take the application of the first paragraph into account.”

FINAL PROVISIONS

9. Proceedings brought before this Act comes into force may serve as a basis for a motion under section 312.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2), enacted by section 6.

10. This Act comes into force on 9 April 2013.