

An Act to enable students to receive instruction from the postsecondary institutions they attend. Hereafter referred to as the “Act.”

This explanatory text is the result of the study and discussion of An Act to enable students to receive instruction from the postsecondary institutions they attend (hereafter referred to as the “Act”) by the CLASSE legal committee and its allies. We wish to take this opportunity to thank all those whom we contacted and who were able to support us in this endeavour.

This document is not to be considered as legal counsel or advice. It is above all a source of information meant to inform and therefore render more democratic the information on the various sections applicable under this Act.

On this note, we have included a number of sections entitled “For further reflection” in this document. The reason for these sections is simple: since the Act has not yet been applied and the fines described have not yet been contested in court, case law has yet to be established (at this date). The scope of the Act remains, for the moment, more or less speculative.

For example, it is important to note that many of the criteria required to determine whether an infraction has in fact been committed under this Act are not explicitly outlined in the text of the Act and will therefore require the courts to further define and limit their application in the future.

Finally, this document is addressed specifically to students, student associations, and federations of student associations. Professional associations are mentioned, but only in cases where they share “common responsibilities” with student associations or federations of student associations under this Act. **Directives as to the academic calendars of colleges and universities, the suspension of semesters and the back-to class portions of this Act have not been outlined in the present document.**

First version

May 22, 2012

This document has since been updated.

UQAM Law students:

Andrée Bourbeau, Émilie Charette and Patrick Véronneau
for

The CLASSE Legal Committee

Updates

May 24, 2012:

In the various amendments to Bill 78, a section entitled “22.1” was added. However, in the “final” version of the Act, this section was added to the paragraph entitled “23.” References to the various sections of the Act in the present document have therefore been revised accordingly as of May 24, 2012.

TABLE OF CONTENTS

SECTION I – Penal procedure	5
SECTION II – Penal infractions	
Introduction	8
Demonstrations as referred to under sections 16 and 17 of the Act	9
A NATURAL PERSON, A BODY OR A GROUP that PARTICIPATES in a demonstration and NEITHER IS NOR IS ACTING AS:	
Leader, Employee, Representative, or Spokesperson	
of a student association, a federation of student associations, or a professional association.	
Demonstrations as referred to under sections 16 and 17 of the Act	10
A NATURAL PERSON, A BODY OR A GROUP that PARTICIPATES in a demonstration and IS NOT:	
A Leader, Employee, Representative, or Spokesperson	
of a student association, a federation of student associations, or a professional association.	
Demonstrations as referred to under sections 16 and 17 of the Act	12
A NATURAL PERSON, A BODY OR A GROUP that ORGANIZES a demonstration and IS:	
A Leader, Employee, Representative, or Spokesperson	
of a student association, a federation of student associations, or a professional association.	
Demonstrations as referred to under sections 16 and 17 of the Act	
A student association, a federation of student associations, or a professional association PARTICIPATING in a demonstration.	Error! Bookmark not defined.
Demonstrations as referred to under sections 16 and 17 of the Act	16
A student association, a federation of student associations, or a professional association ORGANIZING a demonstration.	
Cessation of classes, hard pickets, etc. as referred to under sections 13 and 14 of the Act	17
A NATURAL PERSON, A BODY OR A GROUP that PARTICIPATES in such an action and IS NOT: a Leader, Employee, Representative, or Spokesperson of a student association, a federation of student associations, or a professional association.	
Cessation of classes, hard pickets, etc. as referred to under sections 13 and 14 of the Act	18
A NATURAL PERSON, A BODY OR A GROUP that PARTICIPATES in such an action and IS: a Leader,	

Employee, Representative, or Spokesperson of a student association, federation of student associations, or professional association.

Cessation of classes, hard pickets, etc. as referred to under sections 13 and 14 of the Act

A student association, a federation of student associations, or a professional association that **ORGANIZES OR ENCOURAGES** such an action.

**Error!
Bookmark
not
defined.**

SECTION III – Civil liability

22

SECTION IV – Other important considerations

23

SECTION I – Penal procedure

In the application of the Act in question, statements of offence will be mailed or given to offenders by officers of the law with the latter having the discretionary power to determine the amount of the fines according to the parameters set in the Act.¹ The amount of the fine should therefore appear on the statement of offence; thereafter, if the alleged offender contests the ticket, the Court may modify the amount of the fine if it sees fit.

What are the consequences of such tickets for individuals?

A ticket (fine) received for the commission of a penal infraction is not a criminal charge. Being found guilty of said infraction will not result in a criminal record. Being found guilty of an alleged penal infraction, in this case, would instead impose what in some cases would be large fines, depending on the situation and on the “function” of the natural person in question.

What is a statement of offence? Can it be contested?

A statement of offence, related to a fine imposed, is a sanction associated with a penal infraction. It therefore falls under the rules associated with the arraignment process. For an individual having been given a ticket by a police officer, it is possible to either pay the fine, that is to say plead guilty, or to contest it in court. It is important to contest the fine (or in other words, to plead not guilty) **within 30 days** of having received the statement of offense.

Even in the case of collective contestation, in order to be more efficient and also more “political,” it is necessary to “individually” contest tickets first. This consists of pleading not guilty by checking the box to this effect on the ticket.

There is also a section on the ticket where you can fill in your reasons for contesting. It is usually a bad idea to fill out this section, as this information can be used against you. We do, however, strongly encourage you to write “I request the disclosure of evidence.” Basing the challenge on the evidence the police used to justify giving you a ticket will allow you to build a defense.

Lastly, it is strongly recommended that you write your own account of the events as soon as possible (since the trial may be months away). Make sure that any witness testimony does not contradict your version of the events, as this could lead a judge to consider your testimony to lack credibility.

How does a contestation play out?

Once a contestation has been filed, the court clerk sends the date, time, and location of the hearing. It usually takes about four to five months from the time of the infraction to when a verdict is rendered by a judge.

You may choose to have a lawyer represent you. We suggest that you do so in order to increase the chances of a successful outcome. The CLASSE legal committee is currently raising funds to cover the legal costs incurred by student movement arrestees. **We cannot pay your fine and related fees but we can cover the cost of contesting the ticket.** If you are represented by a lawyer, he or she will probably join your case with those of other alleged offenders in order to file a “collective contestation” with the Court.

You must remain informed and updated on your own case and the legal proceedings you have undertaken. You **must** be present in Court when required and take your responsibilities in this process seriously. The Legal Committee will do everything in its power to help you financially and logistically but we will not contest your ticket *for* you.

¹ Section 26 of the Act.

If the Court finds the offender guilty of the infraction, payment of the fine cannot be enforced for a minimum of 30 days. It is important to note that during these proceedings the Court must determine **beyond reasonable doubt** whether the natural person has really committed the infraction in question.

This is to say that fines, if found to be valid, will only need to be paid about six months after the infraction is committed. However, in the current political context, the courts may prioritize hearings relating to infractions committed under the special law, consequently speeding up the process.

What happens if a natural person or organization is fined and cannot pay the fine?

For a natural person:

If such an individual is found guilty of an infraction, following a contestation in Court, they would usually have thirty days from the date of the judgment to pay the fine.

If the fine is not paid, the individual's property and assets will be examined. It is also possible to sign a payment agreement (e.g. monthly installments).

If a payment agreement is not respected, you can expect the seizure of property, income, tax returns, etc.

In the case of an insolvent individual, it may be possible to perform community service to pay off the debt, to the equivalent of a maximum 1500 hours over two years.

If the individual were unable to complete the hours of community service agreed upon, it would then be possible to impose a relatively short period of incarceration, as is usually the case with penal offenses.

From section 366 of the Code of Penal Procedure:

"366. Any natural person who deliberately attempts to avoid payment of the sums the natural person owes, in particular by refusing the various terms and conditions offered for payment of the sums due, by failing to honour the natural person's agreement to appear before the collector, by refusing or neglecting to carry out compensatory work or by rendering himself or herself insolvent, is guilty of an offence and is liable to imprisonment for a period not exceeding two years less one day."

From the fourth paragraph of section 366 of the Code of Penal Procedure:

"The sentence imposed for this offence does not discharge the defendant from payment of the sums due. Payment of the sums due does not discharge the defendant from the requirement to serve the sentence of imprisonment."

For a legal person:

If such a body is found guilty of an infraction, following a contestation in Court, it would usually have thirty days from the date of the judgment to pay the fine.

If the fine is not paid, the property and assets belonging to the entity will be examined. It is also possible to sign a payment agreement (e.g. monthly installments).

If a payment agreement is not respected, property and investments will be seized.

If a legal person is found to be insolvent, it must declare bankruptcy. This bankruptcy would then result in the dissolution of the entity.

In practice, the resolution of an imposed fine may only happen after several months or years. In the case of being condemned to pay a fine, the court may allow a grace period of several months before any payment is required. The collection of funds is then delegated to the *Bureau des infractions et amendes* whose agents may approve any reasonable arrangement including the performance of community service.

If a given individual contests a ticket, which court hears their case? What procedure applies to the contesting of a ticket before this court?

This type of challenge is usually heard by the Court of Quebec, Criminal and Penal Division. The Code of Penal Procedure applies to this type of proceeding, and the regular rules of Penal responsibility will apply to the proceedings. For this reason, the infraction must be proven **beyond all reasonable doubt** by the prosecution.

What defense can be invoked before the court when contesting a ticket?

In the case of a natural person having received a statement of offence and having chosen to contest their ticket, it may be possible to challenge the legality of the infraction they are being accused of. In fact, it's possible to argue that the infraction is not specific enough and therefore cannot truly inform someone's behaviour. It is equally possible to argue that the infraction infringes on a mandatory right guaranteed by a charter (in other words, its constitutionality).

But again, various scenarios are possible when contesting a ticket for an offence described in the Act, with many of these scenarios helping to further delay the payment of fines.

Can an application for annulment be made? Can we argue the law is Unconstitutional?

A motion for declaratory judgment in Superior Court, to request that the Act be annulled because of its unconstitutional nature, **could suspend hearings related to tickets under the Act**. This option would greatly benefit us, as no fine could be imposed before a decision as to the constitutionality of the Act had been rendered. It's important to note that any decision rendered in superior Court can be appealed, first in the Court of Appeals and then in Supreme Court, if necessary.

A request to defer implementation of certain sections of the Act can also be made in order to ensure that certain sections of the Act not be immediately applicable.

How long after an alleged infraction is committed can a Statement of Offence be sent to the alleged offender? Is it no longer valid after a certain time has passed?

According to Section 14 of Quebec Penal Procedure:

"Penal proceedings are prescribed by one year from the date of commission of the offence."

In other words, if the alleged infraction were committed over a year before, it would be "too late" to issue a Statement of Offence and a fine, if applicable. In other words it is possible to receive a statement of offence by mail up to one year after the alleged commission of an offence.

SECTION II – Penal infractions

INTRODUCTION

Please note that this section of the document has been subdivided into “categories” depending on the “role” or “status” of the individual or organization (student associations, federations of student associations, professional associations) at the time of a demonstration (sections 16 and 17 of the Act) or disruption of services at an educational institution (sections 13 and 14 of the Act).

DEFINITIONS

In this section of the document (SECTION II – Penal infractions):

- The term “association” refers to a student association or professional association as described in the Act.
- The term “federation” refers to a federation of associations as described in the Act.
- The term “function,” when referring to an association or a federation, may refer to any of the following: a natural person who is a Leader, employee, representative, or spokesperson.

ON SECTION 30 OF THE ACT

“Anyone who helps or induces a natural person to commit an offence under this Act is guilty of the same offence and is liable to the fine prescribed by the first paragraph of section 26 or by subparagraph 1 or 2 of the second paragraph of that section if either subparagraph applies.” [Emphasis added].

This section invokes the responsibility of any natural person or organization (“anyone”) who helps or induces any other natural person (the law does not mention organizations, but “natural person” should be read here as “natural person or organization”) to commit an infraction under the Act.

The implications of being held responsible for helping a natural person to commit an infraction do not seem, at first glance, problematic. The implications of being held responsible for inducing another natural person to commit an infraction, however, raise a number of questions.

For further reflection:

In the original version of Bill 78, the formulation was “by encouragement, advice, consent, authorization or command” in reference to inducing a natural person to commit an infraction under the Act. The omission of “particularly” in the text of the Bill seems to suggest that this list was considered exhaustive. The current formulation does not limit the verb “induces” whatsoever. The scope of this term within the context of this Act therefore has yet to be determined by the Courts.

A statement by a natural person who serves a “function” within an association or federation to the effect of disobeying the law could theoretically lead to their being held responsible.

Demonstrations under sections 16 and 17 of the Act

A NATURAL PERSON who PARTICIPATES in a demonstration who NEITHER IS NOR IS ACTING AS:

- **Leader**
- **Employee**
- **Representative**
- **Spokesperson**

Of a student association, a federation of student associations, or a professional association.

Please note that the term “professional” only refers to professionals (employees) of educational institutions².

A natural person who participates in a demonstration who is not an organizer of the demonstration and who is not there as a representative of or acting on behalf of a student association or federation that is participating in the demonstration is not targeted by the Act.³ In fact, only associations and federations who are not organizers but participate in demonstrations are required to use all “appropriate means” to ensure that these demonstrations conform to the information provided to authorities.⁴

For further reflection:

If leaders, employees, representatives, and spokespeople of associations and federations are held responsible for and seen to represent their associations or federations and must use all “appropriate means” to ensure that demonstrations do not diverge from information provided authorities, would they then be held personally responsible and be subject to fines if a demonstration were to diverge from its original plan?

² Section 1 of the Act.

³ Section 17 of the Act.

⁴ Section 16 and paragraph 1 of the first subparagraph section 16 of the Act.

Demonstration according to sections 16 and 17 of the Act

A **NATURAL PERSON** who **ORGANIZES** a demonstration and **IS NOT**:

- **Leader**
- **Employee**
- **Representative**
- **Spokesperson**

Of a student association, a federation of student associations, or a professional association.

*Please note that the term “professional” only refers to professionals (employees) of educational institutions.*⁵

If the demonstration is made up of at least 50 people and is held in a venue accessible to the public, **the natural person organizing the demonstration** must communicate the following information to police: “the date, time, duration and venue of the demonstration as well as its route, if applicable.”⁶

If the police consider that the planned venue or route poses “serious risks for public security,” they may, before the start of the demonstration, impose a change of route or venue⁷. Within a timeframe agreed upon with police, **the natural person organizing the demonstration** must provide the police with the new route or venue and advise participants of the changes.⁸

Note that the rule of “50 meters from the outer limits” of the grounds of an establishment cannot be applied to sections 16 and 17 of the Act unless the demonstration contravenes sections 13 and 14.

For further reflection:

The meaning given to the terms “serious risks for public security” remains to be defined. The law does not specify what is meant by the use of these words. Does this mean the protection of certain places, certain goods, certain people or the protection (sic) of the participants in the demonstration? In this respect the police have a broad discretionary – and for that matter, arbitrary – power at their disposal.

A natural person organizing a demonstration is required to use the “appropriate means” to ensure the demonstration adheres to the plan that has been provided to authorities.⁹

It is important to note that the Act is silent on what constitute “appropriate means.” It will therefore once again fall to the courts to define what those means may be.

⁵ Section 1 of the Act.

⁶ Section 16 and paragraph 1 of the first subparagraph of section 16 of the Act.

⁷ Second subparagraph of section 16 of the Act.

⁸ Second subparagraph of section 16 of the Act.

⁹ Section 17 of the Act.

For further reflection:

Is it expected that a **natural person who organizes a demonstration and who occupies a “function” within an association or a federation** must “block the way” when faced with a deviation, for example if the demonstration takes a route other than that submitted to the police? Hard to say. As an **organizer**, and in a situation where this natural person is “responsible” for the deviation, is there reason to believe that a violation of the Act has taken place?

A natural person who organizes a demonstration and who contravenes the preceding section faces a fine ranging from \$7,000 to \$35,000¹⁰.

A natural person who organizes a demonstration and who “helps or induces” another natural person (including an organization) to contravene the preceding section faces a fine between \$7,000 and \$35,000.¹¹

Finally, anyone who “helps or induces” **the natural person who organizes a demonstration** to violate the preceding section also faces a fine.¹² The amount of the fine is established depending on whether the offender is simply a natural person or a natural person occupying a “function” within an association, a federation or an entity holding legal personhood.¹³

Fines will be doubled in the case of any repeat offence.¹⁴

¹⁰ Paragraph 1 of the second subparagraph of section 26 of the Act

¹¹ Section 30 of the Act

¹² Section 30 of the Act

¹³ Section 26 of the Act

¹⁴ Third subparagraph of section 26 of the Act

Demonstration according to sections 16 and 17 of the Act

A NATURAL PERSON who ORGANIZES a demonstration and WHO IS:

- **Leader**
- **Employee**
- **Representative**
- **Or spokesperson**

Of a student association, a federation of associations or professional association

Note that the term “professional” only refers to professionals (employees) of educational institutions.¹⁵

If the demonstration is made up of at least 50 people and is held in a venue accessible to the public, **a natural person who occupies a “function” within an association or a federation and who is organizing the demonstration** must communicate with the police “the date, time, duration and venue of the demonstration as well as its route, if applicable”¹⁶.

If the police believe that the place or the route of the demonstration involves a “serious risks for public security”, the police can, prior to the demonstration, require a change in the location or a modification of the route¹⁷. Within a timeframe agreed upon with police, **the natural person organizing the demonstration and occupying a “function” within an association or federation** must submit the new location or the new route to the police and inform the participants¹⁸.

Note that the rule of “50 meters from the outer limits” of the grounds of an establishment cannot be applied to sections 16 and 17 of the Act unless the demonstration contravenes sections 13 and 14.

For further reflection:

The meaning given to the terms “serious risks for public security” remains to be defined. The law does not specify what is meant by the use of these words. Does this mean the protection of certain places, certain goods, certain people or the protection (sic) of the participants in the demonstration? In this respect the police have a broad discretionary – and for that matter, arbitrary – power at their disposal.

A natural person who occupies a “function” within an association or a federation and who organizes a demonstration undertakes to employ “appropriate means” to see to it that the unfolding of the demonstration is in line with the information given to the police.¹⁹

It is important to note that the Act is silent on what constitute “appropriate means.” It will therefore once again fall to the courts to define what those means may be.

¹⁵ Section 1 of the Act

¹⁶ Section 16 and paragraph 1 of the first subsection of the same section of the Act

¹⁷ Second subparagraph of section 16 of the Act

¹⁸ Second subparagraph of section 16 of the Act

¹⁹ Section 17 of the Act

For further reflection:

Is it expected that a **natural person who organizes a demonstration and occupies a “function” within an association** must “block the way” when faced with a deviation, for example if the demonstration takes a route other than that submitted to the police? Hard to say. As an **organizer**, and in a situation where this natural person is “responsible” for the deviation, is there reason to believe that a violation of the Act has taken place?

Also, since **the natural person who organized the demonstration** acts potentially in the name of and on behalf of an association or federation, the criteria defining the “appropriate means” would surely be more “restrictive” than in the situation where the natural person merely organized the demonstration but did not occupy a “function” in an association or a federation.

A natural person who occupies a “function” within an association or a federation, who organizes a demonstration and who violates the preceding faces a fine ranging from \$7,000 to \$35,000²⁰.

A natural person who organizes a demonstration, who occupies a “function” within an association or a federation and who “helps or induces” another natural person (including a legal person) to violate the preceding will face a fine ranging from \$7,000 to \$35,000²¹.

Finally, anyone who “helps or induces” **the natural person organizing the demonstration, who occupies a “function” within an association or a federation** to violate the preceding faces a fine²². The amount of the fine will be set in accordance with whether the natural person is an individual, a natural person occupying a “function” within an association, a federation or a legal person²³.

Likewise, and **as a leader, employee, representative or spokesperson for a student association, for a federation of associations or for professional association, the natural person organizing the demonstration** and who violates the preceding also exposes the association or the federation to possible fines²⁴. So if it is found that this natural person acted in the name or on behalf of an association or a federation (for example, following a mandate voted in a general assembly, in congress or in council, but not limited to those), the association or the federation may face a fine ranging from \$25,000 to \$125,000²⁵.

Fines will be doubled in the case of any repeat offence.²⁶

For further reflection:

Who is the “natural person” properly considered to be the organizer of the demonstration: the natural person who contacted the police concerning the date, the time, the place and the route for the demonstration? The association, or the federation, or even both? This natural person as well as the natural person’s association or federation? What about the other people who make up the council or the executive committee of the association or the federation: will they also be considered organizers of the demonstration and thus be subject to fines?

²⁰ Paragraph 1 of the second subparagraph of section 26 of the Act

²¹ Section 30 of the Act

²² Section 30 of the Act

²³ Section 26 of the Act

²⁴ Paragraph 2 of the second subparagraph of section 26 of the Act

²⁵ Paragraph 2 of the second subparagraph of section 26 of the Act

²⁶ Third subparagraph of section 26 of the Act

Demonstration according to sections 16 and 17 of the Act

A student association, a federation of associations or a professional association that PARTICIPATES in a demonstration.

Please note that the term “professional” only refers to professionals (employees) of educational institutions.²⁷

An association or a federation that participates in a demonstration undertakes to employ “appropriate means” to see to it that the unfolding of the demonstration is in line with the information given to the police.²⁸

It is important to note that the Act is silent on what constitute “appropriate means.” It will therefore once again fall to the courts to define what those means may be.

For further reflection:

Is it expected that an **association or federation participating in a demonstration**, must “block the way” when faced with a deviation, for example if the demonstration takes a route other than that submitted to the police? Hard to say. Lastly, the definition of “appropriate means” will surely prove more “restrictive” for an association or a federation than for a natural person.

An association or a federation that participates in a demonstration and that violates this section faces a fine ranging from \$25,000 to \$125,000.²⁹

An association or a federation that participates in a demonstration and that “helps or induces” another natural person (including a legal person) to violate this section will face a fine ranging from \$25,000 to \$125,000.³⁰

Lastly, anyone who “helps or induces” an **association or a federation participating in a demonstration** to violate this section will face a fine.³¹ The amount of the fine will be based on whether they are simply a natural person or a natural person occupying a “function” within an association, federation or legal person.³²

Fines will be doubled in the case of any repeat offence.³³

For further reflection:

If **leaders, employees, representatives and spokespeople of an association or a federation** are held responsible for and seen to represent their associations or federations and must use all “appropriate means” to ensure that demonstrations do not diverge from information provided authorities, would they then be held personally responsible and be subject to fines if a demonstration were to diverge from its original plan?

²⁷ Section 1 of the Act

²⁸ Section 17 of the Act

²⁹ Paragraph 2 of the second subparagraph of section 26 of the Act

³⁰ Section 30 of the Act

³¹ Section 30 of the Act

³² Section 26 of the Act

³³ Third subparagraph of section 26 of the Act

Demonstration according to sections 16 and 17 of the Act

A student association, federation of associations or a professional association that ORGANIZES a demonstration.

Please note that the term “professional” only refers to professionals (employees) of educational institutions.³⁴

If the demonstration is made up of at least 50 people and is held in a venue accessible to the public, **the association or the federation organizing the demonstration** must contact the police with the “the date, time, duration and venue of the demonstration as well as its route, if applicable.”³⁵

If the police believe that the place or the route of the demonstration involves “serious risks for public security”, the police can, prior to the demonstration, require a change in the location or a modification of the route³⁶. Within a timeframe agreed upon with police, **the association or the federation organizing the demonstration** must submit the new location or the new route to the police and inform the participants.³⁷

Note that the rule of “50 meters from the outer limits” of the grounds of an establishment cannot be applied to sections 16 and 17 of the Act unless the demonstration contravenes sections 13 and 14.

For further reflection:

The meaning given to the terms “serious risks for public security” remains to be defined. The law does not specify what is meant by the use of these words. Does this mean the protection of certain places, certain goods, certain people or the protection (sic) of the participants in the demonstration? In this respect the police have a broad discretionary – and for that matter, arbitrary – power at their disposal.

An association or a federation that organizes a demonstration undertakes to employ “appropriate means” to see to it that the demonstration conforms to the information given to the police.³⁸

It is important to note that the Act is silent on what constitute “appropriate means.” It will therefore once again fall to the courts to define what those means may be.

For further reflection:

Is it expected that an **association or federation organizing a demonstration**, must “block the way” when faced with a deviation, for example if the demonstration takes a route other than that submitted to the police? Hard to say. Also, the criteria defining “appropriate means” will surely be more “restrictive” for an association or a federation the criteria defining the “appropriate means” would surely be more “restrictive” than in the situation where a natural person merely organized the demonstration. Is it possible, for example, that “internal security” would then become mandatory in demonstrations?

An association or a federation that organizes a demonstration and that violates this section faces a fine of \$25000 to \$125000³⁹.

An association or a federation that organizes a demonstration and that “helps or induces” another person (or legal person) to violate this section will likewise face a fine ranging from \$25,000 to \$125,000⁴⁰.

³⁴ Section 1 of the Act

³⁵ Section 16 and paragraph 1 of the first subsection of the same section of the Act

³⁶ Second subparagraph of section 16 of the Act

³⁷ Second subparagraph of section 16 of the Act

³⁸ Section 17 of the Act

³⁹ Paragraph 2 of the second subparagraph of section 26 of the Law

Finally, anyone who “helps or induces” **an association or a federation that organizes a demonstration** to violate the preceding faces a fine⁴¹. The amount of the fine will depend on whether it is a natural person, a natural person occupying a “function” within an association or a federation or a legal person⁴².

Fines will be doubled in the case of any repeat offence.⁴³

For further reflection:

If **leaders, employees, representatives and spokespeople of an association or a federation** are held responsible for and seen to represent their associations or federations and must use all “appropriate means” to ensure that demonstrations do not diverge from information provided authorities, would they then be held personally responsible and be subject to fines if a demonstration were to diverge from its original plan?

⁴⁰ Section 30 of the Act

⁴¹ Section 30 of the Act

⁴² Section 26 of the Act

⁴³ Third subparagraph of section 26 of the Act

**Cessation of classes, hard pickets, etc. According to sections 13 and 14 of the Act
A NATURAL PERSON who PARTICIPATES in one of these actions and WHO IS NOT:**

- **An organizer**
- **Leader**
- **Employee**
- **Representative**
- **Spokesperson**

For a student association, a federation of associations or professional association.

*Please note that the term “professional” only refers to professionals (employees) of educational institutions.*⁴⁴

Section 13 of the Act:

“No one may, by an act or omission, deny students their right to receive instruction from the institution they attend or prevent or impede the resumption or maintenance of an institution’s instructional services or the performance by employees of work related to such services, or directly or indirectly contribute to slowing down, degrading or delaying the resumption or maintenance of such services or the performance of such work.” [Emphasis added.]

Section 14 of the Act:

“No one may, by an act or omission, deny a natural person access to a place if the natural person has the right or a duty to be there in order to obtain services from or perform functions for an institution.

Without restricting the generality of the first paragraph, any form of gathering that could result in denying such access is prohibited inside any building where instructional services are delivered by an institution, on the grounds of such a building or within 50 metres from the outer limits of such grounds.” [Emphasis added]

A natural person (whether or not they are a student of the institution in question, whether or not they are a member of the association or the federation that might be involved) who violates the preceding faces a fine ranging from \$1000 to \$5,000 for each day or part of a day of the violation⁴⁵.

Likewise, **a natural person (whether they are a student of the institution or not, whether or not they are a part of the association or federation that might be involved) that “helps or induces” another natural person (including a legal person) to violate the preceding will likewise face a fine ranging from \$1,000 to \$5,000 for each day or part of a day of the violation**⁴⁶.

Fines will be doubled in the case of any repeat offence.⁴⁷

⁴⁴ Section 1 of the Act

⁴⁵ First subparagraph of section 26 of the Act

⁴⁶ Section 30 of the Act

⁴⁷ Third subparagraph of section 26 of the Act

Cessation of classes, hard pickets, etc. according to sections 13 and 14 of the Act

A NATURAL PERSON who PARTICIPATES in one of these actions and WHO IS:

- An organizer
- Leader
- Employee
- Representative
- Spokesperson

For a student association, a federation of associations or professional association.

Note that the term “professional” concerns only the employees of a teaching institution⁴⁸.

Section 13 of the Act:

Section 13 of the Act:

“No one may, by an act or omission, deny students their right to receive instruction from the institution they attend or prevent or impede the resumption or maintenance of an institution’s instructional services or the performance by employees of work related to such services, or directly or indirectly contribute to slowing down, degrading or delaying the resumption or maintenance of such services or the performance of such work.” [Emphasis added]

Section 14 of the Act:

“14. No one may, by an act or omission, deny a natural person access to a place if the natural person has the right or a duty to be there in order to obtain services from or perform functions for an institution.

Without restricting the generality of the first paragraph, any form of gathering that could result in denying such access is prohibited inside any building where instructional services are delivered by an institution, on the grounds of such a building or within 50 metres from the outer limits of such grounds.” [Emphasis added]

Note that the student association “must employ appropriate means to induce the students it represents not to contravene sections 13 and 14.”⁴⁹ Act is silent on what constitute “appropriate means.” It will therefore once again fall to the courts to define what those means may be.

For further reflection:

In light of the preceding, and even though the law does not make it explicit, it is worth considering that it is incumbent upon the leaders, employees, representatives and spokespeople to assure that the “appropriate means” have been taken. By acting in violation of sections 13 and 14, would a natural person occupying one of these functions make the association or federation responsible therefore face a fine?

A natural person who occupies a “function” within an association or a federation and who violates the preceding faces a fine ranging from \$7,000 to \$35,000 for each day or part of a day of the violation⁵⁰.

A natural person who occupies a “function” within an association or a federation who “helps or induces” another natural person (including a legal person) to contravene the preceding will face a fine ranging from \$7,000 to \$35,000⁵¹.

⁴⁸ Section 1 of the Act

⁴⁹ Second subparagraph of section 15 of the Act

⁵⁰ Paragraph 1 of the second subparagraph of section 26 of the Act

Finally, anyone who “helps or induces” a **natural person who occupies a “function” within an association or a federation** to violate the preceding faces a fine⁵². The amount of the fine is established by the fact that it is a natural person, a natural person occupying a “function” within an association or a federation or a legal person⁵³.

Likewise, and **as a leader, employee, representative or spokesperson for a student association, for a federation of associations or for professional association, the natural person** who violates the preceding also exposes the association or the federation to possible fines⁵⁴. So if it is found that this natural person acted in the name or on behalf of an association or a federation (for example, following a mandate voted in a general assembly, in congress or in council, but not limited to those), the association or the federation may face a fine ranging from \$25,000 to \$125,000⁵⁵.

Also, the student association would lose, by order of the Minister of Education, the payment of assessments, access to its premises, to the furniture it has been provided with, to the notice boards and display stands, for one term per day or part of a day of violation.⁵⁶ Note that this “penalty” results from the exercise of a discretionary power on the part of the Minister of Education.

If it is a violation that can be imputed to a federation of associations, following an appeal made by it to violate sections 13 or 14 of the Act, for example, by order of the Minister of Education, it would lose the payment of its assessments by its member student associations, for a period of one term per day or part of a day of violation⁵⁷. If a member association of this federation still pays its assessments to the federation, the student association would face a fine ranging from \$25,000 to \$125,000⁵⁸.

Fines will be doubled in the case of any repeat offence.⁵⁹

⁵¹ Section 30 of the Act

⁵² Section 30 of the Act

⁵³ Section 26 of the Act

⁵⁴ Paragraph 2 of the second subparagraph of section 26 of the Act

⁵⁵ Paragraph 2 of the second subparagraph of section 26 of the Act

⁵⁶ Second and third subparagraphs of section 18 of the Act

⁵⁷ First and second subparagraphs of section 20 of the Act

⁵⁸ Section 28 of the Act

⁵⁹ Third subparagraph of section 26 of the Act

Cessation of classes, hard pickets, etc. according to sections 13 and 14 of the Act
A student association, a federation of association or professional association that ORGANIZES OR ENCOURAGES such actions.

Note that the term “professional” only concerns the employees of an educational institution.⁶⁰

Section 13 of the Act:

“No one may, by an act or omission, deny students their right to receive instruction from the institution they attend or prevent or impede the resumption or maintenance of an institution’s instructional services or the performance by employees of work related to such services, or directly or indirectly contribute to slowing down, degrading or delaying the resumption or maintenance of such services or the performance of such work.” [Emphasis added]

Section 14 of the Act:

“No one may, by an act or omission, deny a natural person access to a place if the natural person has the right or a duty to be there in order to obtain services from or perform functions for an institution.

Without restricting the generality of the first paragraph, any form of gathering that could result in denying such access is prohibited inside any building where instructional services are delivered by an institution, on the grounds of such a building or within 50 metres from the outer limits of such grounds.” [Emphasis added]

Note that the student association “must employ appropriate means to induce the students it represents not to contravene sections 13 and 14.”⁶¹ Act is silent on what constitute “appropriate means.” It will therefore once again fall to the courts to define what those means may be.

On the subject of “omission,” it is possible to find that an association or a federation that omits to warn its members not to act in this way, in connection with its obligation to use the appropriate means, would be committing an infraction with respect to sections 13 and 14 of the Act.

An association or a federation that organizes a demonstration and that violates the preceding faces a fine of \$25000 to \$125000 for each day or part of a day of violation⁶².

An association or a federation that “helps or induces” another natural person (including a legal person) to violate the preceding will likewise face a fine ranging from \$25,000 to \$125,000 for each day or part of a day of the violation⁶³.

Finally, anyone who “helps or induces” **an association or a federation** to violate the preceding faces a fine⁶⁴. The amount of the fine will depend on whether it is a natural person, a natural person occupying a “function” within an association or a federation or a legal person⁶⁵.

Also, the student association would lose, by order of the Minister of Education, the payment of assessments, access to its premises, to the furniture it has been provided with, to the notice boards and display stands, for one term per day or part of a

⁶⁰ Section 1 of the Act

⁶¹ Second subparagraph of section 15 of the Act

⁶² Paragraph 2 of the second subparagraph of section 26 of the Act

⁶³ Section 30 of the Act

⁶⁴ Section 30 of the Act

⁶⁵ Section 26 of the Act

day of violation.⁶⁶ Note that this “penalty” results from the exercise of a discretionary power on the part of the Minister of Education.

If it is a violation that can be imputed to a federation of associations, following an appeal made by it to violate sections 13 or 14 of the Act, for example, by order of the Minister of Education, it would lose the payment of its assessments by its member student associations, for a period of one term per day or part of a day of violation⁶⁷. If a member association of this federation still pays its assessments to the federation, the student association would face a fine ranging from \$25,000 to \$125,000.⁶⁸

Fines will be doubled in the case of any repeat offence.⁶⁹

Note that an association or a federation cannot reach a friendly agreement with its institution for the suspension of classes, for example. Thus the institution that fails to report to the Minister of Education that courses did not take place (or that teaching services were not rendered) with respect to sections 13 or 14 of the Act exposes itself to a fine varying from \$25,000 to \$125,000.⁷⁰

⁶⁶ Second and third subparagraphs of section 18 of the Act

⁶⁷ First and second subparagraphs of section 20 of the Act

⁶⁸ Section 28 of the Act

⁶⁹ Third subparagraph of section 26 of the Act

⁷⁰ Second paragraph of the second subparagraph of section 26 of the Act

SECTION III – Civil Liability

What is the difference between civil liability and penal liability?

There is a clear distinction between the civil and penal proceedings that can be taken against student associations and federations of associations under the Act.

Penal proceedings are initiated when peace officers (sic) issue statements of offence. The sanctions imposed are fines.

Associations or federations of associations are not solidarily liable for penal offences committed by others. Rather, inciting someone to commit an offence or failing to take “appropriate means” to prevent an infraction may itself constitute an offence.⁷¹

Civil proceedings, in contrast, are initiated by a plaintiff (or group of plaintiffs in the case of a class action) who believe(s) they have suffered damages. In such cases, a defendant who is found liable is sanctioned through a requirement to pay restitution to the plaintiff(s) equivalent to the actual financial, emotional, or physical damage suffered.

Section 24 of the Act:

“For the purposes of section 22, damage includes any additional cost assumed or loss of earnings or revenue incurred by anyone, including a student, an institution or the State.”

Associations and federations of associations are only “solidarily liable” when they have committed the offence of “helping or inducing” others to violate sections 13 or 14 of the Act, and **only with respect to civil liability**.⁷² If fines were to be imposed against an association and a federation of associations for the same offence, for example, being held solidarily liable would mean one or the other could be held responsible for a larger share of the fine or even for the total fine imposed.

What must the plaintiff prove when initiating civil proceedings?

The person, institution, or the State⁷³ who initiates a civil proceeding against an association or federation of associations must prove three elements:

1. The damage suffered:⁷⁴ any additional cost assumed or any loss of earnings or revenue incurred by anyone.
2. The fault of the defendant: an association or federation of associations is at fault if it helps or induces anyone to commit an offence defined in section 13 or 14.
3. The causal link between the fault and the damage suffered: the fault committed by the association or federation of association actually brought about the damage.

⁷¹ See section 30 of the Act

⁷² Section 22 of the Act

⁷³ Section 24 of the Act

⁷⁴ Section 24 of the Act

Section IV – Other important considerations

Minors

It is important to note that this law suspends article 233 of the Code of Penal Procedure, which provides that fines of more than \$100 may not be imposed against minors.⁷⁵

Excerpt from section 31 of the Act:

“The amounts of fines set out in this Act apply in all cases and despite article 233 of the Code of Penal Procedure.”

Excerpt from article 233 of the Code of Penal Procedure:

“Where the defendant is under 18 years of age, no fine to which he is liable may exceed \$100, notwithstanding any provision to the contrary.”

In other words, this amounts to a statement that under this Act, persons under 18 may face fines of more than \$100 despite the provisions of article 233 of the Code of Penal Procedure.

Excerpt from article 366 of the Code of Penal Procedure:

“Any person who deliberately attempts to avoid payment of the sums the person owes, in particular by refusing the various terms and conditions offered for payment of the sums due, by failing to honour the person's agreement to appear before the collector, by refusing or neglecting to carry out compensatory work or by rendering himself or herself insolvent, is guilty of an offence and is liable to imprisonment for a period not exceeding two years less one day.”

Article 366.2 of the Code of Penal Procedure:

“366.2. No penal proceedings under article 366 shall be instituted against a person under 18 years of age. “

Attempting to divert funds belonging to a student association or a federation of associations to avoid a fine or seizure

Article 1631 of the Quebec Civil Code:

“ A creditor who suffers prejudice through a juridical act made by his debtor in fraud of his rights, in particular an act by which he renders or seeks to render himself insolvent, or by which, being insolvent, he grants preference to another creditor may obtain a declaration that the act may not be set up against him.”

The above article of the Quebec Civil Code stipulates that a student association or federation of associations cannot attempt to divest itself of assets or deplete its funds to avoid seizure or avoid paying what it owes.

Excerpt from article 366 of the Code of Penal Procedure:

“Any person who deliberately attempts to avoid payment of the sums the person owes, in particular by refusing the various terms and conditions offered for payment of the sums due, by failing to honour the person's agreement to appear before the collector, by refusing or neglecting to carry out compensatory work or by rendering himself or herself insolvent, is guilty of an offence and is liable to imprisonment for a period not exceeding two years less one day.” [Emphasis added]

Declaring bankruptcy and starting up under another name

For a student association:

The administrative sanctions (assessments, premises, notice boards, and display stands) would be transferred to successor student associations; this is explicitly stated in sections 18 and 19 of the Act.

⁷⁵ Section 31 of the Act

Excerpt from the second paragraph of section 18 of the Act:

“If the Minister notes that the institution is unable to deliver instructional services as a result of a failure by a student association to comply with an obligation imposed by this Act, the Minister may, despite any provision to the contrary, order the institution to cease collecting the assessment established by the student association or any successor student association and to cease providing premises, furniture, notice boards and display stands to the student association or any successor student association free of charge.” [Emphasis added]

Excerpt from section 19 of the Act:

“Despite any provision to the contrary, students represented by a student association referred to in the second paragraph of section 18 are not required to pay any assessment, contribution or other similar amount to the student association, any successor student association or a third party for the benefit of either for the duration of the cessation ordered under section 18.”[Emphasis added]

For a federation of associations:

Where a federation of associations is charged with a violation of articles 13 or 14 of the Act, an order of the Minister of Education can prevent member associations from paying their assessments to that federation. This order also targets any successor federation.⁷⁶ In addition, if a member association of that federation pays its assessments notwithstanding the order, they may face a fine between \$25 000 and \$125 000.⁷⁷

Excerpt from section 20 of the Act:

“...all student associations to cease paying any assessment, contribution or other similar amount to the federation of associations, any successor federation of associations or a third party for the benefit of either.”[Emphasis ours]

For further consideration:

By the same token, it seems likely that any fines payable by a student association or federation of associations would be transferred to any successor student associations or federations of associations.

Resignation of administrators, directors, employees, representatives, and spokespersons.

An administrator of a student association or federation of associations who resigns is immune from penal or civil liability for the actions of that federation. However, the resignation only releases the administrator from liability for possible violations that occur after his or her resignation. In addition, an administrator who resigns but continues to “in fact” act within the terms of his or her former position could be considered to be continuing to exercise the duties of an administrator.

When an administrator’s term of office expires, he or she shall remain in office until such time as he or she is re-elected, replaced by another administrator, or simply removed.

The expiry of the term of office of an executive or a person acting as a representative, director, employee, or spokesperson of a student association or federation of associations does not grant such a person *de facto* immunity from civil or penal liability. However, it is reasonable to believe that the guidelines that apply to the resignation of an administrator would also apply in this case.

⁷⁶ Section 20 of the Act

⁷⁷ Section 28 of the Act

Section 123.76 of the Companies Act

“Notwithstanding the expiry of his term, a director remains in office until he is re-elected, replaced, or removed.
A director may resign from office by giving notice to that effect.”

Red square

Whatever Minister of Education, Recreation, and Sports Michele Courchesne might think, we do not believe that wearing a red square constitutes incitement to violate the Act under the provisions of section 30. We do not grant such a broad interpretation of the terms “help or induce” in this section. In addition, no other provision of the law could, in our opinion, target the red square.