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# NATIONAL ASSEMBLY

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SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 30

## **An Act to amend the Supplemental Pension Plans Act**

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### **Introduction**

**Introduced by  
Mr André Bourbeau  
Minister of Manpower, Income Security  
and Skills Development**

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## EXPLANATORY NOTES

*This bill amends the Supplemental Pension Plans Act adopted in 1989. Its main object is to lift the moratorium imposed by the Act to amend the Act respecting supplemental pension plans (1988, chapter 79) which, from 15 November 1988, prohibited the payment of all or part of the surplus assets of pension plans to employers who were parties to such plans.*

*The proposed amendments authorize the allocation of the surplus assets of a plan to the employer only, the members and beneficiaries only or both the employer and the members and beneficiaries. However, payment of such a surplus will be subject to an agreement between the parties to the plan or decided by arbitration.*

*In order that an agreement may be reached between the employer and the members or beneficiaries, the bill requires that the employer propose a draft agreement, within a set time, on the allocation of surpluses. If less than 30 % of the members or beneficiaries oppose the draft agreement, it is deemed to be accepted and is binding on the parties to the plan. Where the plan is established under a collective agreement, the surplus assets are allocated in accordance with that agreement if it so provides, or in accordance with any other agreement between the parties.*

*The bill provides that where no agreement is reached between the employer and the members or beneficiaries or, where applicable, the employees' association representing the members, the interested parties may, until 31 December 1993, elect to submit the matter to arbitrators, who will decide how the surplus assets are to be divided. From 1 January 1994, recourse to arbitration will become compulsory, where the parties do not agree, to enable surplus assets to be divided. Chapter XIV.1, enacted by this bill, prescribes the rules which will apply to arbitration and entrusts the organization of arbitration to bodies accredited for that purpose by the Government. A list of arbitrators is drawn up by a committee. Lastly, the arbitrators may decide, on the basis of general guidelines provided*

*in the bill, according to equity. No appeal lies from arbitration decisions.*

*The bill sets out the standards governing surplus assets and the rights of members and beneficiaries where the plan is converted, merged or divided and where partial termination affects a major proportion of the members. It also provides a series of amendments to simplify the rules applicable to the termination of a plan.*

*Finally, the bill makes certain corrections to the provisions of the existing Act, including the provisions concerning employers' contributions and the calculation of the return on pension funds. It grants new regulatory powers to the Government, in particular to provide for the modalities of arbitration and enacts transitory provisions applicable to pending matters.*

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# Bill 30

## **An Act to amend the Supplemental Pension Plans Act**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

**1.** Section 14 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended

(1) by striking out the words “and address” in the first line of subparagraph 1 of the second paragraph;

(2) by replacing the words “refunds or pension benefits are” in the first line of subparagraph 8 of the second paragraph by the words “the plan is”;

(3) by adding, after subparagraph 15 of the second paragraph, the following subparagraph:

“(16) which of the employer only, the members and beneficiaries only or both the employer and the members and beneficiaries will be entitled to the surplus of assets determined upon the total termination of the plan, and, in the latter case, the percentage of such a surplus due to them. The percentages may, where the surplus is to be used to increase pension benefits, take into account the value of the obligations arising from such increases.”

**2.** Section 20 of the said Act is amended

(1) by inserting the words “cancels refunds or pension benefits, changes the conditions of eligibility therefor or” after the word “which” in the first line of the first paragraph;

(2) by striking out the words “or published” in the last line of the first paragraph;

(3) by adding, at the end of the last paragraph, the following sentence: "This restriction is not applicable, however, in the cases mentioned in the preceding paragraph."

**3.** Section 22 of the said Act is amended by replacing the second paragraph by the following paragraph:

"In addition, if the amendment is intended to convert benefits resulting from the application of provisions which grant members defined benefits for service credited to them under the plan up to the date on which the amendment becomes effective, into amounts which, credited as defined contributions, will be used to purchase a pension of an indeterminate amount, such an amendment may be authorized only if the value of the benefits of every member who agrees to the conversion is equal to or greater than the value to which he would have been entitled had the plan been partially terminated on the date on which the amendment is to become effective."

**4.** Section 26 of the said Act is amended by replacing the words "a reduction of benefits" in the eighth line of subparagraph 2 of the first paragraph by the words "the cancellation of refunds or pension benefits, a change in the conditions of eligibility or a reduction in the amount or value of the benefits of members or beneficiaries".

**5.** Section 33 of the said Act is amended by inserting the words "by the replacement of his pension pursuant to section 92" after the words "another plan," in the third line of the second paragraph.

**6.** The said Act is amended by inserting, after section 45, the following section:

**45.1** Where the interest due on the amounts credited to a member is to be calculated on the basis of the return obtained on the assets invested, and the investment results in a loss, such amounts may be reduced proportionally to the fraction that the amount of the loss is of such assets."

**7.** Section 46 of the said Act is amended by adding, at the end, the following paragraph:

"The method used to calculate the loss incurred by the assets and the resulting reduction of the value of the contributions shall, for the purposes of section 45.1, be determined in the same way."

**8.** Section 47 of the said Act is amended

(1) by inserting the words “, subject to the provisions of section 45.1,” after the word “continue” in the eighth line;

(2) by inserting the words “are used to replace a pension under section 92,” after the word “contributions” in the ninth line.

**9.** Section 60 of the said Act is amended

(1) by adding, at the end of subparagraph 2 of the first paragraph, the words “pursuant to subparagraph 2 of the first paragraph of section 86”;

(2) by adding, at the end of the second paragraph, the following subparagraphs:

“(5) to that part of any pension benefits accrued during a period of service which, even though no employer contributions were paid in respect of the member, was nevertheless credited by reason of the exercise by the member of an election offered to him under the plan for that purpose, insofar as it is provided that all the obligations arising from the election are to be borne by the member;

“(6) to a benefit to which subparagraph 1 of the first paragraph applies and which was purchased with amounts to be refunded, or is the result of the conversion of a pension other than a life pension.”

**10.** The said Act is amended by inserting, after section 63, the following section:

**“63.1** Where the value of the benefits of a member or a beneficiary under a pension plan exceeds the upper limit fixed in that respect by fiscal rules, the pension committee must refund the excess portion in order that the plan may continue to be a certified pension plan as defined in section 1 of the Taxation Act.”

**11.** Section 71 of the said Act is amended

(1) by striking out the words “, before terminating continuous employment,” in the first and second lines of the second paragraph;

(2) by inserting the words “, whether or not he has terminated continuous employment,” after the word “may” in the third line of the second paragraph.

**12.** Section 103 of the said Act is amended by inserting the words “and subject to the provisions of section 45.1,” after the word “interest,” in the first line.

**13.** The said Act is amended by inserting, after section 165, the following section:

**“165.1** As soon as it is informed thereof, the pension committee shall notify the Régie in writing of any effective or proposed reduction in the number of active members due in particular to changes of a technological or economic nature in the enterprise of an employer who is a party to the plan, or to the division, amalgamation, alienation or closing down of the enterprise.”

**14.** Section 195 of the said Act is amended

(1) by striking out the second sentence of the first paragraph;

(2) by inserting, after the first paragraph, the following paragraph:

“The Régie may not authorize such a division except where the plan into which a portion of the assets to be divided is to be transferred includes provisions which, in respect of the allocation of any surplus assets in case of termination, are identical in their effects to the provisions of the plan from which such assets were transferred.”

**15.** Section 196 of the said Act is amended by adding, at the end, the following paragraphs:

“Finally, where, to satisfy the requirements of the first paragraph of this section, the provisions of the plan of which all or part of the assets and liabilities are to be merged with those of another plan have been amended with respect to the allocation of surplus assets in case of total termination of the plan, the merger may not be authorized, except where

– all the members and beneficiaries of the amended plan who are affected by the proposed merger have been informed of the effects of the amendment;

– less than 30 % of such members and beneficiaries have opposed the amendment.

The provisions of sections 230.4 to 230.6 apply, adapted as required, to the procedure to be followed when informing and consulting the members and beneficiaries contemplated by the third paragraph.”

**16.** The said Act is amended by inserting, after section 199, the following section:

**199.1** Where several partial terminations have occurred in respect of the same pension plan, or where, in a given period and on different dates, several events have occurred which could each result in a partial termination of the plan, those terminations or events may, for the purposes of this chapter, be considered to be or to relate to one and the same partial termination if, in the opinion of the Régie, they are based on similar circumstances, such as those mentioned in section 165.1.”

**17.** Section 200 of the said Act is amended

(1) by striking out the words “in the case of a contributory plan, the effective date shall not be later than the date of the decision and,” in the fourth, fifth and sixth lines, by replacing the word “not” in the sixth line by the words “the effective date shall not be”, and by striking out the words “and not later than the date of the decision of the Régie” in the eighth line;

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

“Where it relates to the partial termination of a plan, the decision of the Régie may indicate that the members who subsequently cease to be active shall also be affected by the termination, to the extent that the terminations in question are based on similar circumstances, such as those mentioned in section 165.1.”

**18.** Section 202 of the said Act is amended by inserting, after the first sentence of the first paragraph, the following sentence: “In addition, where the provisions of subdivision 4.1 of Division II of Chapter XIII must be applied in order to determine to whom the surplus assets are to be allocated, the draft report shall mention, in respect of that surplus, only the amount thereof.”

**19.** Section 203 of the said Act is amended by adding, at the end of subparagraph 2 of the first paragraph, the following sentence: “However, this information is not required where the provisions of subdivision 4.1 of Division II of Chapter XIII must be applied in order to determine the person entitled thereto;”

**20.** Section 204 of the said Act is amended

(1) by replacing the words “receiving the notice of conformity” in the fourth line of the first paragraph by the words “transmission of the statements referred to in section 203”;

(2) by striking out the last paragraph.

**21.** Section 205 of the said Act is amended

(1) by inserting the words “or within such extension of time as may be granted by the Régie,” after the word “representations,” in the third line of the first paragraph;

(2) by inserting the words “, the newspaper in which it appeared” after the figure “204” in the fourth line of the second paragraph.

**22.** The said Act is amended by inserting, after section 205, the following section:

**“205.1** Each time the provisions of subdivision 4.1 of Division II of Chapter XIII are applied to determine to whom the surplus assets are to be allocated, the pension committee shall, within 60 days after the making of an agreement, the transmission of a declaration or the date on which an arbitration award becomes executory, present to the Régie, for approval, a supplement to the draft termination report setting out the final allocation of the surplus and the share, if any, due to each of the members and beneficiaries.”

**23.** Section 206 of the said Act is amended

(1) by inserting the words “or a supplement thereto” after the word “report” in the first line of the first paragraph;

(2) by replacing the words “to whom the assets are to be allocated under the terms of the plan” in the fourth and fifth lines of the first paragraph by the words “entitled thereto”;

(3) by striking out the second paragraph.

**24.** Section 207 of the said Act is amended

(1) by inserting the words “of the draft termination report or a supplement thereto” after the word “approval” in the second line;

(2) by replacing the words “If the draft termination report is approved” in the fifth and sixth lines by the words “If approval is given”;

(3) by inserting the words “or supplement thereto” after the word “report” in the tenth line.

**25.** The said Act is amended by inserting, after section 207, the following section:

**“207.1** A pension plan which has been totally terminated may not be amended after the date of termination.

This provision shall not prevent the Régie from registering after that date an amendment to the plan made before that date.”

**26.** Section 208 of the said Act is repealed.

**27.** Section 213 of the said Act is replaced by the following section:

**“213.** The benefits of members affected by a partial termination of a pension plan shall, where such members ceased to be active members on a date prior to the date of the partial termination, be assessed in accordance with actuarial assumptions and methods identical to those which were sent to the Régie and which, on the date on which the members ceased to be active members, were used to determine the value of the pension benefits to which section 60 applies and to which the members were entitled on that date.”

**28.** Section 217 of the said Act is amended

(1) by replacing the word “Any” in the first line by the words “Except in the case of a share of the surplus assets, any”;

(2) by adding, at the end, the following sentence: “Where the amount due is due under a defined contribution plan, or where it is due under provisions of the plan which relate to voluntary contributions or under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan, the rate of interest shall be the rate mentioned in section 44 or 45 and which is applicable to the contributions paid under the plan.”

**29.** Section 218 of the said Act is amended by replacing the word “concurrently” in the second line of subparagraph 5 of the first paragraph by the words “in the following order”.

**30.** Section 219 of the said Act is repealed.

**31.** The said Act is amended by inserting, after section 230, the following subdivision:

“§ 4.1.—*Distribution of surplus assets in the event of total termination*

“**230.1** The allocation of any surplus assets from a pension plan which has been totally terminated is subject

(1) to an agreement to be made between the employer, the members and the beneficiaries pursuant to sections 230.2 to 230.6; or

(2) where the plan was established under a collective agreement, an arbitration award in lieu thereof or an order which renders such an agreement compulsory,

(a) to the application of the provisions, if any, of the agreement or the arbitration award in lieu thereof which provide for the allocation of the surplus assets in the event of total termination of the plan. A joint statement by the parties bound by the agreement or award must, in that case, be sent to the pension committee, stating that under the agreement or award the surplus assets will be allocated, as the case may be, to the employer only, to the members and beneficiaries only or to both the employer and the members and beneficiaries and, in the latter case, the percentage due to each; or

(b) to an agreement to be made between the parties bound by the agreement or award, establishing the surplus assets on the date of termination, which of the employer only, the members and beneficiaries only or both the employer and the members and beneficiaries is entitled thereto and, in the latter case, the percentage due to each.

In all cases, however, the parties bound by the agreement or award may elect to make an agreement pursuant to paragraph 1 of this section. Finally, the application of the provisions of the agreement or award providing for the allocation of the surplus, or the making of an agreement under subparagraph *b* above, does not remove the obligation also to make an agreement under the said paragraph 1 which affects any other members who are not governed by the agreement or award, and the beneficiaries; or

(3) in all the cases provided for in section 230.7, to an arbitration award rendered pursuant to Chapter XIV.1.

“**230.2** In order that an agreement may be made pursuant to paragraph 1 of section 230.1, the employer must, within six months after transmission to the pension committee of the decision of the Régie which fixes the date of termination of the plan, send to the pension committee a draft agreement indicating

- (1) the surplus assets determined on termination of the plan;
- (2) to whom such a surplus is to be allocated: to the employer only, to the members and beneficiaries only or to both the employer and the members and beneficiaries and, in the latter case, the percentage due to each;
- (3) where an agreement has been made or a declaration sent pursuant to subparagraph *a* of paragraph 2 of section 230.1, the portion of the surplus assets due to the employees governed by the collective agreement or the arbitration award in lieu thereof, and the proportion that the value of their benefits is of the value of the benefits of all the members and beneficiaries;
- (4) to the extent that all or part of the surplus is to be allocated to the members and beneficiaries, the method of apportionment to be used to determine the share of each;
- (5) any other information prescribed by regulation.

The method referred to in subparagraph 4 of the first paragraph shall be the method of proportionalization of the surplus according to the value of the benefits of the members and beneficiaries; however, the following methods may also be used in the conditions described:

– a method which grants members who are inactive on the date of termination a larger share of the surplus assets than they would have received on a proportional basis;

– if an actuary certifies that all or part of the surplus is a result of circumstances related to a given group of members or beneficiaries, a method which grants them a larger share than they would have received on a proportional basis;

– any other method, provided that no member or beneficiary subsequently opposes the draft agreement within the period prescribed by section 230.4.

Such a method shall provide for the adjustment of the share of every member or beneficiary in the surplus assets in the event of a change in the amount of the surplus or in the overall value of the benefits of the members and beneficiaries between the date of termination and the date of payment of the share to the persons entitled thereto.

**“230.3** If the employer fails to send a draft agreement to the pension committee within the time and containing the indications

prescribed in the first paragraph of section 230.2 and in the regulations, the employer shall be bound, to the extent to be determined by the arbitrator or arbitrators in view of the circumstances of such a failure, to pay the expenses and fees payable by the members and beneficiaries with respect to any arbitration which may follow and which relates to the surplus. This section shall not apply, however, where the members and beneficiaries have agreed to have recourse to arbitration before the end of the six-month period.

**“230.4** Upon receipt of the draft agreement, the pension committee shall send a copy to every member and beneficiary, together with a notice informing them

(1) of the provisions of the plan relating to the allocation of surplus assets in the event of total termination;

(2) that they may, within sixty days, inform the pension committee in writing of their opposition to the draft agreement.

Unless the pension committee is exempted therefrom by the Régie where it is attested in writing that all the members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally, the pension committee shall, in addition, not later than the date on which the notices provided for in the first paragraph are sent, cause to be published in a newspaper circulated in the region of Québec where the greatest number of members who were active at the date of termination reside, a notice of the total termination of the plan and of the existence of a surplus of assets and a draft agreement submitted by the employer concerning apportionment of that surplus. The notice shall also invite any person who has not received the abovementioned notice and who believes he has rights under the plan or under this Act

– to assert his rights with the pension committee within sixty days after publication, subject to the additional time granted by section 230.8;

– to the extent that he is able to justify his rights, to consult the text of the draft agreement at the office of the pension committee, or to request a copy thereof from the committee and, where applicable, to inform the committee in writing of his opposition within the abovementioned time.

The time allowed under this section to assert rights or to oppose the draft agreement begins to run only from the date on which the

statement provided for in section 203 is sent to every member or beneficiary, where that statement is sent after the copy of the draft agreement.

The pension committee shall also send without delay to the Régie a copy of the draft agreement, the notice sent to members and beneficiaries and, where applicable, the notice published in the newspaper.

**“230.5** Where the content of the draft agreement or the transmission thereof does not conform to the provisions of this Act or the regulations, the Régie may order that any measure be taken to correct the irregularity, provided this may still be done within the six-month period provided for in section 230.2. If the period expires before the irregularity is corrected, the Régie is bound to invalidate the draft agreement.

Where the content or publication of the notices referred to in section 230.4 does not conform to the requirements of that section, the Régie may order the pension committee to take any corrective measure it indicates, within the time fixed, including the prorogation of the time for opposition or assertion of rights.

**“230.6** Except where 30 % or more of the members and beneficiaries oppose it in the conditions set out in section 230.4, and subject to any decision made by the Régie under section 230.5 and any arbitration award which may be rendered pursuant to Chapter XIV.1, the draft agreement submitted by the employer is, upon expiry of the time for opposition, deemed to be accepted and, from that moment, binds all those who have rights or obligations under the plan.

The pension committee shall send forthwith to the Régie a statement evidencing the acceptance.

**“230.7** Where

– 30 % or more of the members and beneficiaries oppose the draft agreement submitted by the employer;

– the employer has failed to send a draft agreement to the pension committee within the time prescribed by section 230.2;

– no statement was sent and no agreement was made as provided, respectively, in subparagraphs *a* and *b* of paragraph 2 of section 230.1;

– the agreements made and statements sent do not affect all the members and beneficiaries of the plan;

- the Régie has invalidated the draft agreement submitted by the employer by reason of an irregularity;

- the pension committee has not regularized the content or publication of the notices referred to in section 230.4, as it was ordered to do by the Régie;

- the interested persons have agreed to have recourse to arbitration before expiry of the time prescribed in sections 230.2 to 230.4,

the employer, the employees' association and, unless they are prevented from doing so by the effect of other legislation, any member or beneficiary, may have recourse to arbitration pursuant to Chapter XIV.1 in order to determine who is entitled to the surplus assets and what share of that surplus is due to them.

Such persons may also have recourse to arbitration even where an agreement has been reached, in order to obtain a decision on any difficulty in interpreting or implementing the agreement. The arbitrator or arbitrators seized of a matter may, of his or their own initiative or on application, and after giving the interested persons the opportunity to present their points of view, decide that an agreement made under section 230.1 is prejudicial to the rights of any employer, member or beneficiary not affected by the agreement and that as a result all or part of it may not be set up against him.

**“230.8** The recourse to arbitration provided for in the first paragraph of section 230.7 extends the time limit established by the second paragraph of section 230.4 for asserting rights until the date on which the arbitration award is rendered.”

**32.** The said Act is amended by inserting, after section 238, the following section:

**“238.1** Subject to the provisions of section 238, failure by a person to assert his rights within the time prescribed by this Act shall deprive that person of the right to claim payment of the corresponding benefits out of the assets of the pension plan, unless that person shows, before the payment of the benefits of the affected members or beneficiaries begins, that it was impossible for him to act sooner or that he did not receive the information to which he was entitled under this Act for a reason outside his control.”

**33.** The said Act is amended by inserting, after section 240, the following sections:

**“240.1** The share of the surplus assets to which a member or beneficiary is entitled may be paid to him in the form of a life pension only, except for that part which pertains to

(1) a refund or a pension benefit resulting from the exercise of an election under subparagraphs 4 to 6 of the first paragraph of section 93;

(2) benefits in excess of the upper limit fixed by fiscal rules.

**“240.2** Where, on the date of partial termination of a pension plan, one of the following events occurs, the members affected by the termination whose benefits were paid on that occasion or subsequently, shall remain members, notwithstanding the second paragraph of section 33, for the sole purpose of the apportionment of any surplus assets which may be determined in the event of a total termination of the plan:

(1) that part of the liabilities which corresponds to the value of the benefits of the members affected by the partial termination of the plan represents 50 % or more of the liabilities established in accordance with the standards prescribed by this Act to verify the solvency of the plan, as stated in the report prepared following the last actuarial valuation of the plan sent to the Régie;

(2) where a plan has less than 200 active members at the date of the end of the fiscal year preceding either the fiscal year during which termination occurred or, in the cases provided for in section 199.1, the fiscal year during which the first members affected by the termination ceased to be active, 100 or more of those members are affected by the termination;

(3) the number of members affected by the partial termination of the plan is equal to or higher than the figure A or B, as the case may be, obtained by applying the following formulas:

$$\frac{500 + 2a}{9} = A$$

where

“a” represents the number of active members of the plan at the date of the end of the fiscal year preceding either the fiscal year during which termination occurred or, in the cases provided for in section 199.1, the fiscal year during which the first members affected by the termination ceased to be active, which number shall not be less than 200 nor more than 2 000;

$$\frac{6\,000 + b}{16} = B$$

where

“*b*” represents the number of active members of the plan at the date of the end of the fiscal year preceding either the fiscal year during which termination occurred or, in the cases provided for in section 199.1, the fiscal year during which the first members affected by the termination ceased to be active, which number shall not be less than 2 001 nor more than 10 000;

If the figure A or B so obtained has decimal fractions, it is rounded up to the next whole number.

(4) where a plan has more than 10 000 active members at the date of the end of the fiscal year preceding either the fiscal year during which termination occurred or, in the cases provided for in section 199.1, the fiscal year during which the first members affected by the termination ceased to be active, 1 000 or more of those members are affected by the termination.

**“240.3** The Régie may, in the cases and on the conditions set out in paragraphs 1, 2 and 3 below, exempt a pension plan which has been totally or partially terminated from the application of the provisions of this chapter mentioned in the said paragraphs:

(1) any plan which, at the time of its total termination, had 15 members or less, may be exempted from the application of all or some of the provisions of this chapter, provided the following conditions are satisfied:

- the pension committee attests in writing that the persons who may be entitled to assert rights under the plan have all been notified personally of the termination of the plan and the value of their benefits;

- all such persons have accepted, in writing, the assessment of their benefits;

- any other conditions which the Régie may fix;

(2) any plan other than a multi-employer plan which is partially terminated, including a plan partially terminated in the conditions described in section 240.2 provided, in that case, that the report prepared following the last actuarial valuation of the plan sent to the Régie indicates that the plan is solvent, may be exempted, in matters relating to the termination, from the application of all or some of the

provisions of sections 202 to 210 and 212 to 240, if the pension committee provides the Régie, within the time fixed by section 202, with a termination report containing the information prescribed by regulation;

(3) any multi-employer plan which is totally or partially terminated, and any other plan which, although not solvent on the date of the last actuarial valuation as stated in the report sent to the Régie, was partially terminated in the conditions described in section 240.2, may be exempted, on the conditions fixed by the Régie, from the application of the provisions of sections 220 to 227.”

**34.** The said Act is amended by inserting, after Chapter XIV, the following chapter:

#### “CHAPTER XIV.1

##### “ARBITRATION

**“243.1** The provisions of Title I of Book VII of the Code of Civil Procedure (R.S.Q., chapter C-25), with the exception of articles 940, 940.1, 940.5 to 942, 942.6, 944, the second and third paragraphs of section 944.10, and sections 946 to 947.4 apply, adapted as required and subject to the provisions of this chapter and the regulations, to any arbitration under this Act.

**“243.2** Any matter relating to the apportionment of a surplus of assets determined upon the total termination of a pension plan comes under the exclusive jurisdiction of the arbitrators appointed pursuant to this chapter.

**“243.3** The mission of arbitration shall be entrusted to one arbitrator, except in the following cases, where it shall be entrusted to three arbitrators:

(1) the value involved in the matter submitted to arbitration amounts to \$500 000 or more;

(2) a representative appointed in accordance with section 243.6 has so requested in a case where that value is less than \$500 000 but at least \$100 000.

The Government may, by regulation, increase or reduce the amounts mentioned above used to determine the number of arbitrators required.

**“243.4** Only a natural person may act as an arbitrator.

The Government may, by regulation, determine the qualifying criteria and other conditions to be met by any person in order to act as an arbitrator.

**“243.5** Recourse to arbitration is introduced by an application made to the pension committee.

The information which must be contained in the application, and the documents which must accompany it, shall be fixed by government regulation.

**“243.6** Upon receiving an application for arbitration, the pension committee must convene the members and beneficiaries concerned to a meeting to select the natural person who will represent them in the organization of the procedure of arbitration, and request the employer to disclose the name of the natural person who will be its representative.

In cases where several employers are parties to the plan, the pension committee must, unless it receives confirmation of a written agreement concerning the selection of the employers' representative, convene the employers to a meeting to proceed with the selection of their representative.

The manner of convening such meetings, the quorum and the terms and conditions applicable to the appointment of representatives shall be fixed by regulation of the Government.

**“243.7** The representatives appointed pursuant to section 243.6 shall select, from among the arbitration bodies accredited by the Government, the body that will be responsible for organizing the arbitration; they shall inform the pension committee thereof forthwith. Failing agreement between them concerning the selection of a body, it shall be designated by the pension committee.

The same representatives must also appoint the arbitrator or arbitrators and inform the arbitration body thereof. Failing agreement concerning the selection of one or more arbitrators, the said body shall be entrusted with completing the appointments from the list of arbitrators drawn up pursuant to section 243.16.

The arbitration body must, as soon as the appointments are made as required by the second paragraph, so inform the parties to the arbitration in the manner prescribed by government regulation.

**“243.8** The pension committee shall forward to the arbitration body the application for arbitration, accompanied with the provision

for costs and the information and documents prescribed by regulation of the Government; the body shall, in turn, submit them to the appointed arbitrators.

A copy of the application, together with the accompanying documents or information, must also be furnished by the committee to the Régie.

**“243.9** The arbitration decision must be rendered within a period of six months from the date on which the arbitrator or arbitrators appointed were seized of the case, unless, before its expiry, the period is extended by the arbitration body following an agreement between the parties or at the request of one party.

**“243.10** No arbitrator may be prosecuted by reason of acts performed in good faith in the performance of his duties.

**“243.11** No arbitrator may be recused except where the prevailing circumstances may give rise to doubts as to his impartiality, independence or qualifications.

**“243.12** Any arbitrator may ask a witness any question he considers useful; he may also summon a witness and require him to state what he knows or produce any document requested by the arbitrator.

If the witness so summoned fails to appear, the arbitrator may apply to a judge for a compelling order in accordance with article 284 of the Code of Civil Procedure.

**“243.13** The arbitrators may, where they consider it appropriate for the resolution of the case, decide on the basis of equity, taking into account, in particular, the evolution of the pension plan, any amendments made to it and the circumstances in which those amendments were made, the origin of the surplus assets concerned, the use made in the past of any given surplus assets, as well as any information sent to members and beneficiaries in relation to any such matter.

No appeal lies from an arbitration decision.

**“243.14** A certified copy of the arbitration decision must be filed without delay by the arbitrator or arbitrators who rendered the decision at the office of the prothonotary of the Superior Court of the district in which the office of the pension committee is located.

Once filed, the arbitration decision becomes executory as a judgment of that court.

**“243.15** Except on a question of jurisdiction, no recourse provided under articles 33 and 834 to 846 of the Code of Civil Procedure may be exercised, nor any injunction granted, against an arbitrator acting in his official capacity.

A judge of the Court of Appeal may, on a motion, summarily annul any decision, order or injunction rendered, issued or granted contrary to the first paragraph.

**“243.16** The list of persons who may be appointed as arbitrators by the arbitration body shall be drawn up by a committee composed of the following members, appointed by the Government for the period it determines:

(1) one person recommended by the Minister of Manpower, Income Security and Skills Development;

(2) one person whose name appears on the list supplied by the Régie;

(3) one person whose name appears on the list supplied by the most representative employees' associations;

(4) one person whose name appears on the list supplied by the most representative employers' associations;

(5) one person whose name appears on the list supplied by the arbitration bodies accredited by the Government.

**“243.17** The costs of arbitration and the arbitrators' fees shall be payable by the pension fund but only up to the amount of the surplus assets under consideration. The arbitration body alone is competent to draw up the account of such costs and fees for payment. The account must be paid before execution of the arbitration decision begins.

The tariff of arbitration costs and arbitrators' fees shall be fixed by government regulation.

For the purposes of this section, arbitration costs include the expenses incurred by the arbitration body and the cost of its services.

**“243.18** In addition to the regulatory powers conferred on it by this chapter, the Government may make any other regulation required for the purposes of this chapter, in particular in respect of

(1) the transmission of any document required under this chapter;

(2) the time limits applicable to the execution of any obligation, procedure or formality under this chapter.”

**35.** Section 244 of the said Act is amended by inserting, after subparagraph 12 of the first paragraph, the following subparagraph:

“(12.1) prescribe the information other than that required under section 230.2 which must be contained in any draft agreement sent by the employer to the pension committee concerning the apportionment of surplus assets;”.

**36.** Section 246 of the said Act is amended by inserting the words “, a report respecting its termination” after the word “plan” in the fourth line of paragraph 6.

**37.** Section 256 of the said Act is amended by inserting the words “or arbitration proceedings” after the word “action” in the second line.

**38.** Section 264 of the said Act is amended

(1) by striking out the word “and” in the fourth line of the second paragraph;

(2) by inserting the words “, and any life pension having replaced another pension pursuant to section 92,” after the word “amounts” in the fifth line of the second paragraph.

**39.** Section 283 of the said Act is replaced by the following section:

**“283.** This Act replaces the Act respecting supplemental pension plans (R.S.Q., chapter R-17), except for the first paragraph of section 9.1, the first and last paragraphs of section 43.1 and section 43.2, and except to the extent that it continues to apply to a plan by virtue of section 286 or 316.

The continuation in force of the first paragraph of the said section 9.1 shall not, however, have the effect of prohibiting the amendment of a plan in relation to the apportionment of surplus assets in the event of total termination, to the extent that the amendment is necessary to allow the merger of all or part of its assets and liabilities with those of another plan and applies only to members or beneficiaries affected by the merger.

In addition, the prohibition enacted by the first and last paragraphs of the said section 43.1 shall cease to apply to any surplus assets of a plan which is totally terminated

(1) from the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force, where that surplus has been the subject of judicial proceedings, of apportionment or of an order or decree referred to in section 311.1, or of a judgment that acquires the authority of a final judgment (*res judicata*) before that date;

(2) from the date on which a statement was sent or the agreement was made, where the surplus has been the subject of an agreement or declaration mentioned in paragraph 1 or 2 of section 230.1;

(3) from the date on which the award becomes executory, where the surplus has been the subject of an arbitration award referred to in paragraph 3 of section 230.1 or in section 311.3.”

**40.** Section 286 of the said Act is amended

(1) by replacing the word “The” in the first line of the first paragraph by the words “Subject to section 311.1, the”;

(2) by striking out the third paragraph.

**41.** The said Act is amended by inserting, after section 286, the following section:

**“286.1** With the exception of the applications for review referred to in section 286 which remain subject to the Act respecting supplemental pension plans, and subject to the provisions of sections 308.1 and 311.1, any applications for review pending before the Régie on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force, or introduced after that date and relating to decisions rendered before that date, shall be decided according to the provisions of this Act as they read before that date.”

**42.** The said Act is amended by inserting, after section 288, the following sections:

**“288.1** The provisions of subparagraph 16 of the second paragraph of section 14 are not applicable to pension plans in force

on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force.

However, where such a plan does not specify to whom the surplus assets determined at the time of total termination are to be allocated, only the members and beneficiaries shall be entitled thereto.

**“288.2** The provisions of the second paragraph of section 22, as they read before the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force, shall continue to apply to cases pending before the Régie on that date which relate to the conversion of the type of the plan if, before (*insert here the date of introduction of the said Act*), a written offer had been made to the members and beneficiaries to convert their benefits in accordance with the new version of the provisions of the second paragraph of section 22. Those provisions continue to apply to such cases in respect of the surplus assets of the plan, but only up to the amount offered to the members and beneficiaries who have agreed to the conversion.”

**43.** Section 289 of the said Act is amended by replacing the word “Member” in the first line by the words “Subject to the provisions of section 45.1, member”.

**44.** Section 290 of the said Act is amended by adding, at the end, the words “, without prejudice to the application to that benefit of section 61”.

**45.** Section 291 of the said Act is amended by inserting the words “, subject to the provisions of section 45.1,” after the word “and” in the seventh line of the first paragraph.

**46.** Section 295 of the said Act is amended

(1) by replacing the words “sections 69 and 71” in the first line of the first paragraph by the words “section 69 and the first paragraph of section 71”;

(2) by replacing the fifth line of the first paragraph by the words “following requirements either at the time he ceases to be an active member or, if at that time he does not meet those requirements but continues to work for the same employer, at the time his period of continuous employment ends:”.

**47.** Section 299 of the said Act is amended by inserting the words “, subject to the provisions of section 45.1,” after the word “and” in the fifth line of the second paragraph.

**48.** The said Act is amended by inserting, after section 308, the following sections:

**“308.1** Members affected by the partial termination of a pension plan whose settlement is pending before the Régie on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force, shall, notwithstanding the repeal of section 213 as it read before that date, retain the rights in the surplus assets that the draft termination report proposes to allocate to them, provided that

(1) where the date of the termination occurs between 23 March 1989 and the date on which the said Act is introduced before the National Assembly, the pension committee has, before the later of those dates, sent the statement provided for in section 203 to the affected members or, if it did not do so, provided that the prescribed period for so doing expired before the latter date;

(2) where the date of the termination occurs between 23 March 1989 and the date on which the said Act comes into force, the employer has, before the later of those dates, agreed in writing to grant such rights to the affected members, even where the statement provided for in section 203 has not been sent to them before the latter date.

**“308.2** In cases where, before the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force, the Régie has only approved in part the draft termination report relating to the partial termination of a plan occurring on a date between 23 March 1989 and the date on which the said Act comes into force, thus postponing its decision regarding the allocation of all or part of the surplus assets, those members affected by the termination whose benefits were paid between 1 January 1990 and the later of the above dates shall remain members, notwithstanding the second paragraph of section 33, for the sole purpose of the apportionment of any surplus of assets which may be determined in the event of total termination of the plan.”

**49.** The said Act is amended by inserting, after section 310, the following section:

**“310.1** For the purposes of the provisions of subdivision 4.1 of Division II of Chapter XIII and of section 311.3, persons whose benefits under a pension plan have been paid before 1 January 1990 by means of an annuity contract entered into with an insurer, and persons designated as beneficiaries under the terms of such a contract who are still entitled to benefits thereunder, shall be considered to be members or beneficiaries, as the case may be, provided that, in all cases, the interested parties have acted within the prescribed time limits.

In addition, each time the provisions of the said sections are to be applied following the termination of a pension plan which was in force on 1 January 1990, the notice of which publication is required under section 230.4 shall also state the rule established by the first paragraph of this section. However, if the matter was submitted to arbitration under section 230.7 or 311.3 without publication of the notice, the pension committee shall, as soon as it is informed that the matter will be submitted to arbitration, cause to be published in a newspaper circulated in the region of Québec in which the greatest number of members who were active at the date of termination reside, a notice mentioning the application for arbitration and the rule established by the first paragraph of this section, and informing the interested parties that they may, until the arbitration award is rendered, assert their rights with the committee. A copy of the notice shall be sent forthwith to the Régie.

However, the Régie may exempt the pension committee from the obligation to publish where it is attested in writing that all the members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally.”

**50.** The said Act is amended by inserting, after section 311, the following sections:

**“311.1** The provisions of subdivision 4.1 of Division II of Chapter XIII and of section 311.3 also apply to the apportionment of the surplus assets of any pension plan in force on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter *insert here the chapter number of the said Act in the volume of statutes for 1992*) comes into force, except where that surplus has been the subject of

(1) legal proceedings pending on (*insert here the date of introduction of the Act to amend the Supplemental Pension Plans Act*), provided, however, that such proceedings have not been the subject of a total renunciation or that, in the case of a motion to

authorize a class action, there is no judgment having acquired the authority of a final judgment (*res judicata*) which dismisses the motion;

(2) an apportionment proposed in a draft termination report which grants all the surplus to the members and beneficiaries if, before the date mentioned in paragraph 1, the Régie has considered the draft report to be in conformity with this Act and the pension committee has, before that date, sent the statement required by section 203 to the members and beneficiaries or, where it has neglected to do so, provided that the time limit for doing so expires before that date;

(3) an apportionment provided for in an agreement made before the date on which the above Act comes into force, pursuant to subparagraph 2 of the first paragraph of section 43 of the Act respecting supplemental pension plans, provided, however,

– that the time limit fixed under paragraph *b* of subparagraph 2 of the said section 43 expires before that date and that less than 30 % of the members affected by the termination of the plan informed the Régie of their opposition;

– that the Régie considers the apportionment to be fair to all the members and the information given to such members to be adequate;

(4) that an order made by the Government under section 43.1 of the Act respecting supplemental pension plans has authorized payment to the employer of all or part of the surplus assets.

**“311.2** In the case of a pension plan with surplus assets for which the Régie has, before 1 July 1993, rendered a decision fixing the date of its total termination, the employer, notwithstanding the time limit provided for in the first paragraph of section 230.2, has until 31 December 1993 to send the draft agreement provided for in that section to the pension committee.

Sections 230.3 and 230.5 shall apply in that case, subject to the time granted by the first paragraph of this section.

**“311.3** In addition to the provisions in this respect of paragraphs 1 and 2 of section 230.1, the apportionment of surplus assets in a pension plan which has been totally terminated may also, before 1 January 1994, be subject to an arbitration award rendered pursuant to Chapter XIV.1, in the following conditions:

(1) the interested parties have, before 1 January 1994, agreed to have recourse to arbitration in order to determine who is entitled to the surplus assets and what share of that surplus is due to them. In such a case, the application for arbitration must be introduced before the above date by a statement sent to the pension committee which evidences the agreement;

(2) the application for arbitration must contemplate all the surplus assets and all the members and beneficiaries of the plan.”

**51.** Section 312 of the said Act is amended by replacing the word and figures “23 March 1989” in the third line of the second paragraph by the word and figures “15 November 1988”.

**52.** The provisions of this Act will come into force on the date or dates fixed by the Government, which may not be later than 1 January 1993; however,

(1) the provisions of section 243.2, enacted by section 34, have effect from (*insert here the date on which this Act is introduced in the National Assembly*);

(2) the provisions of paragraph 3 of section 230.1 and section 230.7, enacted by section 32, will come into force on 1 January 1994.