NATIONAL ASSEMBLY

FIRST SESSION THIRTY-FOURTH LEGISLATURE

Bill 97

An Act to amend the Act respecting labour standards and other legislative provisions

Introduction

Introduced by
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EXPLANATORY NOTES

This bill proposes a revision of the Act respecting labour standards.

It incorporates into the Act most of the provisions relating to the maternity leave of 18 weeks enacted by regulation, and abolishes all requirements for uninterrupted service in order to be entitled to the leave. It also introduces unpaid parental leave of up to 34 weeks' duration, and determines the main rules and procedures relating thereto.

The bill also entitles employees to be absent from work, on certain conditions, to fulfil parental obligations, for medical examinations related to pregnancy, at the birth or adoption of a child, or on the occasion of the marriage or death of certain members of their family or the family of their consort. It grants employees a right of recourse in cases where sanctions have been imposed as a result of their refusal, in certain circumstances, to work overtime because of parental obligations towards a minor child.

The bill prohibits employers from paying certain part-time employees a lower salary or reducing their annual leave entitlement.

The bill also changes certain labour standards, in particular

– by adding a statutory general holiday;

– by gradually reducing from ten to five the number of years of service required for an employee to be entitled to three weeks' annual leave;

– by gradually reducing from five to three the number of years of service required for an employee to have a right of recourse in cases of dismissal not made for good and sufficient cause;

– by widening the fields of sanctions entitling an employee to have recourse to a labour commissioner;

– by granting, on certain conditions, a right of recourse in the case of dismissal as a result of illness or accident;

– by giving the Commission des normes du travail the power to exercise more recourses on behalf of employees;

– by transferring to labour commissioners competence for examining complaints of dismissal not made for good and sufficient cause;

– by allowing organizations dedicated to the defence of employees' rights to file complaints with the Commission des normes du travail on behalf of employees who expressly consent thereto;

– by entitling complainants to an administrative review where the Commission des normes du travail refuses to pursue an inquiry.

In addition, the bill renders the Act respecting labour standards applicable to the Government and related bodies and to small farms, but exempts managerial personnel from all its provisions except those relating to certain family leaves. It also amends the definitions of "consort", "domestic" and "uninterrupted service".

It increases the number of members of the board of directors of the Commission des normes du travail and improves its representativity. It also specifies the functions and powers of the Commission, in particular to bring about agreement between employers and employees in respect of their disagreements relating to the application of labour standards.

In addition, the bill contains a number of amendments intended to clarify and simplify the Act. In some cases, it enables the standards to be applied more flexibly with respect to conditions of employment governed by collective agreements.

Finally, it contains a number of transitional provisions which defer application of most of the new standards to employees covered by a collective agreement or a collective agreement decree, in order to allow the parties concerned to harmonize the provisions.

ACTS AMENDED BY THIS BILL:

– National Holiday Act (R.S.Q., chapter F-1.1)

– Act respecting the Ministère de la Main-d'oeuvre et de la Sécurité du revenu (R.S.Q., chapter M-19.1)

– Act respecting labour standards (R.S.Q., chapter N-1.1)

– Act to amend the Labour Code and various legislation (1983, chapter 22)

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING LABOUR STANDARDS

1. Section 1 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended

(1) by replacing subparagraphs *a* and *b* of paragraph 3 by the following subparagraphs:

"(*a*) are married and cohabiting;

"(*b*) are living together as husband and wife and are the father and mother of the same child;

"(*c*) who have been living together as husband and wife for one year or more;";

(2) by replacing the third, fourth and fifth lines of paragraph 6 by the following: "the dwelling of that person, including an employee whose main function is to take care of or provide care to a child or to a sick, handicapped or aged person and to perform domestic duties in the dwelling that are not directly related to the immediate needs of the person in question;";

(3) by adding the words ", and the period during which fixed term contracts succeed one another without an interruption that would, in the circumstances, give cause to conclude that the contract was not renewed" at the end of paragraph 12.

2. Section 2 of the said Act is amended

(1) by striking out paragraph 3;

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

"This Act is binding on the Crown."

3. Section 3 of the said Act is amended

(1) by striking out paragraph 1;

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

"(2) to an employee whose exclusive duty, in a dwelling, is to take care of or provide care to a child or to a sick, handicapped or aged person, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, if that work does not serve to procure profit to the employer, subject to any regulation made under the second paragraph of section 90;";

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

"(3) to an employee governed by the Act respecting labour relations, vocational training and manpower management in the construction industry (chapter R-20), except the standards prescribed by sections 81.1 to 81.17 and, where they relate to any of those standards, the second, third and fourth paragraphs of section 74, paragraph 6 of section 89, Division IX of Chapter IV, Divisions I and II of Chapter V, and Chapter VII;";

(4) by adding, after paragraph 5, the following paragraph:

"(6) to senior managerial personnel, the standards prescribed by sections 81.1 to 81.17 and, where they relate to any of those standards, the second, third and fourth paragraphs of section 74, paragraph 6 of section 89, Division IX of Chapter IV, Divisions I and II of Chapter V, and Chapter VII."

4. Section 3.1 of the said Act is replaced by the following section:

"**3.1** Notwithstanding sections 2 and 3, Division V.1 of Chapter IV and sections 122.1 and 123.1 apply to all employees and to all employers."

5. Section 5 of the said Act is amended by adding, at the end, the following paragraph:

"(5) endeavour to bring about agreement between employers and employees as to their disagreements in relation to the application of this Act and the regulations."

6. Section 8 of the said Act is replaced by the following section:

"**8.** The Commission is composed of not more than twelve members, appointed by the Government, including a chairman and at least one person from each of the following groups:

(1) non-unionized employees;

(2) unionized employees;

(3) employers from the big business sector;

(4) employers from the small and medium-sized business sector;

(5) employers from the cooperative sector;

(6) women;

(7) young people;

(8) family;

(9) cultural communities.

These nine members shall be appointed after consultation with associations or bodies representing their respective sectors."

7. Section 26 of the said Act is amended by replacing the word "three" in the first line of the first paragraph by the word "six".

8. Section 29 of the said Act is amended by replacing the words "fix the method and rate of the levy and the period for which it is exigible, and" in the sixth and seventh lines of paragraph 5 by the words "determine the method of computation and the rate of the levy, the nature of the report which the employer must join to the levy, the date on which the report must be filed and the levy paid to the Commission; it must also".

9. The said Act is amended by inserting, after section 29, the following sections:

"**29.1** The amount of the levy determined pursuant to paragraph 5 of section 29 bears interest from the date on which it becomes exigible at the rate fixed pursuant to section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

"**29.2** An employer who fails to file the report required under paragraph 5 of section 29 by the prescribed date must add 5 % to the amount of the levy due."

10. Section 30 of the said Act, amended by section 700 of chapter 84 of the statutes of 1988, is again amended by adding, after paragraph 15, the following paragraphs:

"(16) employers to whom the Act respecting labour relations, vocational training and manpower management in the construction industry applies in respect of wages paid to employees under that Act;

"(17) the Government and its departments and the bodies and persons whose personnel must, by law, be appointed and remunerated in accordance with the Public Service Act (chapter F-3.1.1) or the capital stock of which belongs entirely to the Government;

"(18) any body established by an Act of the National Assembly or by a decision of the Government, the Conseil du trésor or a minister whose operating appropriations are taken out of the consolidated revenue fund or appear in whole or in part in the budgetary estimates tabled before the National Assembly or are wholly financed by way of a transfer from one of the government departments;

"(19) the Lieutenant-Governor, the National Assembly and any person appointed by the National Assembly to an office which is under the jurisdiction of the National Assembly."

11. Section 39 of the said Act is amended by replacing paragraph 5 by the following paragraph:

"(5) accept on behalf of an employee, with his consent, or on behalf of a group of employees who are parties to a claim, with the consent of the majority of them, partial payment of the amounts owed to the employee or group of employees by the employer;".

12. The said Act is amended by inserting, after the heading of Division I of Chapter IV, the following section:

"**39.1** Unless specific reference to such an employee is made in a government regulation, this division does not apply to an employee hired to work on a farm operated

(1) by a natural person, alone or with his consort or a descendant or ascendant of either, with the habitual assistance of not more than three employees;

(2) by a corporation as its principal activity, with the habitual assistance of not more than three employees in addition to the three principal shareholders of the corporation if they work there;

(3) by a partnership or by natural persons acting as co-owners, with the habitual assistance of not more than three employees."

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

"**41.1** No employer may remunerate an employee at a lower rate of wage than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works less hours each week.

The first paragraph does not apply to an employee remunerated at a rate of pay which is more than twice the rate of the minimum wage."

14. Section 43 of the said Act is amended by adding, at the end of the first paragraph, the following sentence: "However, any amount in excess of the regular wages, such as a bonus or premium for overtime, earned during the week preceding payment of the wages may be paid with the subsequent regular payment or, where that is the case, at the time prescribed by a particular provision of a collective agreement or decree."

15. Section 46 of the said Act is amended

(1) by replacing the fourth line of the first paragraph by the following: "must include, in particular, the following information, where applicable:";

(2) by inserting the words "or replaced by a leave" after the word "paid" in the first line of subparagraph 6 of the first paragraph;

(3) by striking out the word "hourly" in subparagraph 8 of the first paragraph of the English text.

16. Section 54 of the said Act is amended

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

"(2) a student employed in a vacation camp or in a social or community non-profit organization such as a recreational organization;";

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

"(8) an employee hired to work on a farm operated

(*a*) by a natural person, alone or with his consort or a descendant or ascendant of either, with the habitual assistance of not more than three employees;

(*b*) by a corporation as its principal activity, with the habitual assistance of not more than three employees in addition to the three principal shareholders of the corporation if they work there;

(*c*) by a partnership or by natural persons acting as co-owners, with the habitual assistance of not more than three employees.";

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

"However, the Government may, by regulation, prescribe the number of hours it determines as the regular workweek for the categories of employees mentioned in subparagraphs 2 and 5 to 8 of the first paragraph."

17. Section 55 of the said Act is amended by adding, at the end, the following paragraphs:

"Notwithstanding the first paragraph, the employer may, at the request of the employee or in the cases provided for by a collective agreement or decree, replace the payment of overtime by paid leave equivalent to the overtime worked plus 50 %.

Subject to a provision of a collective agreement or decree, the leave must be taken during the 12 months following the overtime at a date agreed between the employer and the employee; otherwise the overtime must be paid. However, where the contract of employment is terminated before the employee is able to benefit from the leave, the overtime must be paid at the same time as the last payment of wages."

18. Section 60 of the said Act is replaced by the following sections:

"**59.1** This division does not apply to an employee who, under a collective agreement or decree, is entitled to a number of non-working days with pay, in addition to the National Holiday, equal to or greater than the number of days to which employees to whom this division applies are entitled, nor to an employee in the same establishment who is entitled to a number of non-working days with

pay, in addition to the National Holiday, equal to or greater than the number stated in the collective agreement or decree.

"**60.** The following days are statutory general holidays:

(1) 1 January;

(2) Good Friday or Easter Monday, at the option of the employer;

(3) the Monday preceding 25 May;

(4) 1 July if it falls on a Monday or a Friday, the Monday nearest to 1 July if it falls on a Sunday, Tuesday or Wednesday, or the Friday nearest to 1 July if it falls on a Thursday or Saturday;

(5) the first Monday in September;

(6) the second Monday in October;

(7) 25 December."

19. Section 61 of the said Act is repealed.

20. Section 62 of the said Act is replaced by the following section:

"**62.** When a holiday coincides with a working day for an employee, the employer must pay him an indemnity equal to the average of his daily wages for the days worked during the complete period of pay preceding that holiday, excluding overtime.

Notwithstanding the first paragraph, the indemnity paid to an employee remunerated mainly by commission must be equal to the average of his daily wages established from all the complete periods of pay in the three months preceding the holiday."

21. Section 65 of the said Act is amended by adding the following paragraph:

"The first paragraph does not confer any benefit on an employee who would not have been entitled to remuneration on a day listed in section 60, except so far as section 64 applies."

22. Section 69 of the said Act is amended

(1) by replacing, on 1 January 1992, the word "ten" in the second line by the word "eight";

(2) by replacing, on 1 January 1993, the word "eight" in the second line by the word "seven";

(3) by replacing, on 1 January 1994, the word "seven" in the second line by the word "six";

(4) by replacing, on 1 January 1995, the word "six" in the second line by the word "five";

(5) by striking out the words ", two of which may be consecutive" in the third and fourth lines.

23. Section 71 of the said Act is amended

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

"**71.** Any part of the annual holiday that exceeds one week may be divided at the request of the employee if the employer consents.";

(2) by striking out the words "into more than two periods," in the second and third lines of the second paragraph;

(3) by striking out the third paragraph.

24. Section 72 of the said Act is amended by replacing the word "An" in the first line by the words "Subject to a provision of a collective agreement or decree, an".

25. Section 74 of the said Act is amended by inserting, after the second paragraph, the following paragraphs:

"The Government may, by regulation, determine a higher indemnity than that provided for in this section for an employee on maternity leave.

Notwithstanding the second and third paragraphs, the annual leave indemnity shall not exceed the indemnity to which the employee would have been entitled if he had not been absent or on leave owing to a reason mentioned in the second paragraph."

26. The said Act is amended by inserting, after section 74, the following section:

"**74.1** No employer may reduce the annual leave of an employee referred to in section 41.1, or the percentage of the indemnity pertaining to it, in comparison with what is granted to other employees performing the same tasks in the same establishment, for

the sole reason that the employee usually works less hours each week."

27. Section 75 of the said Act is amended by replacing the word "The" at the beginning of the first line by the words "Subject to a provision of a collective agreement or decree, the".

28. Section 77 of the said Act, amended by section 251 of chapter 48 of the statutes of 1989, is again amended

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

"(2) a student employed in a vacation camp or in a social or community non-profit organization such as a recreational organization;";

(2) by replacing the word "salesman" in the first line of paragraph 3 by the words "real estate agent";

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

"(4) a representative of a dealer or adviser within the meaning of section 149 of the Securities Act (chapter V-1.1), entirely remunerated by commission;";

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

"However, the Government may, by regulation, render all or some of the provisions of sections 66 to 76 applicable to the employees described in subparagraphs 2 and 6 of the first paragraph."

29. The said Act is amended by striking out the words "AND MISCELLANEOUS LEAVES" in the heading of Division V of Chapter IV.

30. The said Act is amended by inserting, after section 79, the following headings:

"DIVISION V.1

"FAMILY LEAVES".

31. Section 80 of the said Act is amended by replacing the words "of the person to whom he is married or with whom he is living as husband and wife within the meaning of subparagraph *b* of paragraph 3 of section 1, or of his child," in the second, third, fourth and fifth lines by the words "of his consort, his child or the child of his consort, or of his".

32. The said Act is amended by inserting, after section 80, the following sections:

"**80.1** An employee may be absent from work for one day, without pay, by reason of the death or the funeral of a son-in-law, daughter-in-law, one of his grandparents or grandchildren, or of the father, mother, brother or sister of his consort.

"**80.2** In the circumstances referred to in section 80 or 80.1, the employee must advise his employer of his absence as soon as possible."

33. Section 81 of the said Act is amended

(1) by replacing the words "and for two days at the birth or adoption of a child." in the second and third lines of the second paragraph by the words "of his father, mother, brother or sister or of a child of his consort.";

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

"The employee must advise his employer of his absence not less than one week in advance."

34. The said Act is amended by inserting, after section 81, the following sections:

"**81.1** An employee may be absent from work for five days at the birth of his child or the adoption of a child. The first two days of absence shall be remunerated if the employee is credited with sixty days of uninterrupted service.

This leave may be divided into days. It may not be taken more than fifteen days after the child arrives at the residence of its father or mother.

The employee must advise his employer of his absence as soon as possible.

This section does not apply where an employee adopts the child of his consort.

"**81.2** An employee may be absent for five days per year, without pay, to fulfil obligations relating to the care, health or education of his minor child, in cases where his presence is required due to unforeseeable circumstances or circumstances beyond his control. He must have taken all reasonable steps within his power to assume these obligations otherwise and to limit the duration of the leave.

A leave may be divided into days or half-days.

The employee must advise his employer of his absence as soon as possible.

"**81.3** An employee may be absent from work without pay for medical examinations related to her pregnancy.

She shall advise her employer as soon as possible of the time at which she will be absent.

"**81.4** A pregnant employee is entitled to a maternity leave without pay of not more than 18 weeks.

"**81.5** The maternity leave may not begin before the beginning of the sixteenth week preceding the expected date of delivery.

"**81.6** The maternity leave may be taken after giving written notice of not less than three weeks to the employer, stating the date on which the leave will begin and the date on which the employee will return to work. The notice must be accompanied with a medical certificate attesting to the pregnancy and the expected date of delivery.

The notice may be of less than three weeks if the medical certificate attests that the employee needs to stop working within a shorter time.

"**81.7** Notwithstanding sections 81.4 to 81.6, the Government may, by regulation, determine the duration of the maternity leave or, where applicable, any extension thereof, the time at which it may be taken, the notices that must be given and the other conditions applicable

(1) where the delivery takes place after the expected date;

(2) where there is a risk of miscarriage or a risk to the health of the mother or the unborn child;

(3) in the case of a miscarriage or stillbirth;

(4) where the state of health of the mother does not allow her to return to work at the end of the maternity leave.

"**81.8** From the sixth week preceding the expected date of delivery, the employer may, in writing, require a pregnant employee who is still at work to produce a medical certificate attesting that she is fit to work.

If the employee refuses or neglects to produce the certificate within eight days, the employer may oblige her to take her maternity leave immediately by sending her a written notice to that effect giving reasons.

"**81.9** The employer may require a medical certificate from an employee who returns to work within the two weeks following delivery, attesting to the fact that she is fit to work.

"**81.10** The father and the mother of a newborn child, and a person who adopts a child who has not reached the age of compulsory school attendance, are entitled to parental leave without pay of not more than 34 weeks.

This section does not apply to an employee who adopts the child of his consort.

"**81.11** Parental leave may not begin before the day the child is born or, in the case of adoption, the day the child is entrusted to the employee within the framework of an adoption procedure. It shall end not later than one year after the birth or, in the case of adoption, one year after the child was entrusted to the employee.

"**81.12** Parental leave may be taken after giving notice of not less than three weeks to the employer, stating the date on which the leave will begin and the date on which the employee will return to work.

"**81.13** An employee may return to work before the date stated in the notice given pursuant to section 81.6 or 81.12 or pursuant to a regulation made under section 81.7, provided he has given the employer written notice of not less than three weeks of the new date on which he will return to work.

"**81.14** Subject to a regulation made under section 81.7, an employee who does not report to work on the date stated in the notice given to the employer is presumed to have resigned.

"**81.15** At the end of a maternity leave or of a parental leave not exceeding 12 weeks, the employer shall reinstate the employee in his former position with the same benefits, including the wage to which he would have been entitled had he remained at work.

At the end of a parental leave exceeding 12 weeks, the employer may, instead of reinstating the employee in his former position, assign him to comparable employment in the same establishment with a wage equal to or higher than that to which he would have been entitled had he remained at work.

If the position held by the employee no longer exists when he returns to work, the employer shall recognize all the rights and privileges to which the employee would have been entitled if he had been at work at the time his position ceased to exist.

"**81.16** The Government shall, by regulation, determine the benefits to which an employee may be entitled during maternity leave or parental leave, in particular in respect of seniority, the length of his annual leave, the indemnity pertaining to the annual leave, and his participation in the social benefits recognized at his place of work.

"**81.17** Sections 81.4 to 81.16 shall not grant to an employee any benefit to which he would not have been entitled if he had remained at work."

35. The said Act is amended by replacing the heading of Division VI of Chapter IV by the following heading:

"NOTICE OF TERMINATION OF EMPLOYMENT OR LAYOFF, AND WORK CERTIFICATE".

36. Sections 82 and 83 of the said Act are replaced by the following sections:

"**82.** The employer must give written notice to an employee before terminating his contract of employment or laying him off for six months or more.

The notice shall be of one week if the employee is credited with less than one year of uninterrupted service, two weeks if he is credited with one year to five years of uninterrupted service, four weeks if he is credited with five years to ten years of uninterrupted service and eight weeks if he is credited with ten years or more of uninterrupted service.

A notice of termination of employment given to an employee during the period when he is laid off is null, except in the case of employment that usually lasts for not more than six months each year due to the influence of the seasons.

This section does not deprive an employee of a right granted to him under another Act.

"**82.1** Section 82 does not apply to an employee

(1) who has less than three months of uninterrupted service;

(2) whose contract for a fixed term or for a specific undertaking expires;

(3) who has committed a serious fault;

(4) for whom the end of the contract of employment or the layoff is a result of a fortuitous event.

"**83.** An employer who does not give the notice prescribed by section 82, or who gives insufficient notice, must pay the employee a compensatory indemnity equal to his regular wage excluding overtime for a period equal to the period or remaining period of notice to which he was entitled.

The indemnity must be paid at the time the employment is terminated or at the time the employee is laid off for a period expected to last more than six months, or at the end of a period of six months after a layoff of indeterminate length, or a layoff expected to last less than six months but which exceeds that period.

The indemnity to be paid to an employee remunerated mainly by commission is established from the average of his weekly wage, calculated from the complete periods of pay in the three months preceding the termination of his employment or his layoff.

"**83.1** In the case of an employee who, under a collective agreement, is entitled to recall privileges for more than six months, the employer is bound to pay the compensatory indemnity only from the first of the following dates:

(1) the expiry of the recall privileges of the employee;

(2) one year after layoff.

An employee referred to in the first paragraph shall not be entitled to the compensatory indemnity

(1) if he is recalled before the date on which his employer is bound to pay the indemnity and if subsequently he works for a period equal to or longer than that of the notice prescribed by section 82;

(2) if he is not recalled owing to a fortuitous event.

"**83.2** The Government may, by regulation, determine standards which vary from those provided for in sections 82 to 83.1 in respect of employees governed by the Public Service Act who, without being permanent employees, are entitled to recall privileges by virtue of their conditions of employment."

37. Section 85 of the said Act is replaced by the following section:

"**85.** Where an employer requires the wearing of a uniform, he must supply it free of charge to an employee who is paid the minimum wage.

The employer cannot require an amount of money from an employee for the purchase, use or upkeep of a uniform if this payment causes the employee to receive less than the minimum wage."

38. Section 87 of the said Act is replaced by the following section:

"**87.** At the request of the Commission, the employer shall distribute to the employee any informational document on labour standards furnished by the Commission."

39. Section 88 of the said Act is amended

(1) by inserting the words "in a vacation camp or" after the word "employed" in the ninth line of the first paragraph;

(2) by striking out the words "a vacation camp or" in the tenth line of the first paragraph;

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

"The Government may, by regulation, render all or some of the provisions of Division I of Chapter IV applicable to the categories of employees referred to in section 39.1.";

(4) by replacing the word "paragraph" in the third line of the second paragraph by the words "and second paragraphs".

40. Section 89 of the said Act is amended

(1) by adding, after subparagraph *h* of paragraph 4, the following subparagraph:

"(*i*) the categories of employees listed in subparagraphs 2 and 5 to 8 of the first paragraph of section 54;";

(2) by striking out paragraph 5;

(3) by replacing paragraph 6 by the following paragraph:

"(6) the duration of the maternity leave or, where applicable, any extension thereof, the time at which it may be taken, the notices that

must be given and the other conditions applicable in the circumstances described in section 81.7, together with the benefits an employee may receive during a maternity leave or parental leave;".

41. Section 90 of the said Act is amended by adding the following paragraph:

"The Government may also, by regulation, render all or some of the provisions of this Act and the regulations applicable to the employees or a category of employees referred to in paragraph 2 of section 3 and, where that is the case, determine the labour standards which apply to them."

42. Section 91 of the said Act is amended by striking out the last paragraph.

43. Section 98 of the said Act is amended by striking out the last paragraph.

44. Section 100 of the said Act is repealed.

45. Section 102 of the said Act is amended

(1) by adding, at the end of the first paragraph, the following sentence: "Such a complaint may also be filed on behalf of an employee who consents thereto in writing by an organization dedicated to the defence of employees' rights.";

(2) by replacing the word "he" in the first line of the second paragraph by the words "the complainant".

46. Section 103 of the said Act is amended by replacing the words "who has filed a complaint," in the second line by the words "by or on behalf of whom a complaint has been filed,".

47. Section 107 of the said Act is amended by replacing the words "to the employee by registered mail, together with the reasons therefor" in the third and fourth lines by the words "to the complainant by registered mail, giving the reasons therefor and informing him of his right to apply for a review of the decision."

48. The said Act is amended by inserting, after section 107, the following section:

"**107.1** The complainant may, within 30 days of receiving the decision referred to in section 107, apply in writing for a review thereof.

The Commission must render a final decision by registered mail within 30 days of receiving the application from the complainant."

49. Section 111 of the said Act is amended by replacing the words "a copy of such putting in default to the employee" in the first and second lines of the second paragraph by the words "a notice to the employee indicating the amount claimed on his behalf".

50. Section 113 of the said Act is amended by adding the following paragraph:

"The Commission may also exercise the recourses available to an employee against the directors of a legal person."

51. Section 114 of the said Act is amended by striking out the words "by regulation" in the first and second lines of the second paragraph.

52. Section 116 of the said Act is amended by replacing the word "interrupts" in the second line by the word "suspends".

53. The said Act is amended by inserting, after section 119, the following section:

"**119.1** All proceedings brought before the civil courts under this Act constitute matters which must be heard and decided by preference."

54. The said Act is amended by replacing the words "ILLEGAL DISMISSAL" in the heading of Division II of Chapter V by the words "PROHIBITED PRACTICES".

55. Section 122 of the said Act is amended

(1) by inserting the words ", practise discrimination or take reprisals against him, or impose any other sanction upon him" after the word "employee" in the second line of the first paragraph;

(2) by adding, after subparagraph 5 of the first paragraph, the following subparagraph:

"(6) on the ground that the employee has refused to work beyond his regular hours of work because his presence was required to fulfil obligations relating to the care, health or education of his minor child, even though he had taken all reasonable steps within his power to assume those obligations otherwise."

56. The said Act is amended by inserting, after section 122.1, the following section:

"**122.2** No employer or his agent may dismiss, suspend or transfer an employee who has three months of uninterrupted service on the ground that he was absent by reason of illness or accident for a period not exceeding 17 weeks.

The first paragraph shall not prevent an employer or his agent from dismissing, suspending or transferring an employee if, in the circumstances, the consequences of the illness or accident constitute good and sufficient cause.

This section does not apply in the case of an industrial accident or occupational disease within the meaning of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001)."

57. Section 123 of the said Act, amended by section 69 of chapter 85 of the statutes of 1987, is again amended

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

"**123.** An employee who believes he has been the victim of a practice prohibited by section 122 or 122.2 and who wishes to assert his rights must do so before a labour commissioner appointed under the Labour Code in the same manner as if it were a case of dismissal, suspension or transfer, or the practice of discrimination, the taking of reprisals or the imposition of any other sanction by reason of the exercise of a right arising under the Labour Code. Sections 15 to 20, 118 to 137, 139, 139.1, 140, 146.1 and sections 150 to 152 of the Labour Code then apply, adapted as required.";

(2) by replacing the words "Notwithstanding section 15 of the Labour Code, the" in the first line of the second paragraph by the word "The";

(3) by adding, at the end of the second paragraph, the following sentence: "The labour commissioner general shall transmit a copy of the complaint to the Commission.";

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

"The Commission may, in any proceedings relating to this division, represent an employee who is not a member of a group of employees contemplated by a certification pursuant to the Labour Code."

58. The said Act is amended by inserting, after section 123.1, the following sections:

"**123.2** The presumption resulting from the application of the first paragraph of section 123 shall continue to apply for not less than 20 weeks after the employee has returned to work at the end of a maternity leave or parental leave.

"**123.3** The Commission, with the agreement of the parties, may appoint a person who shall endeavour to settle the complaint to the satisfaction of the parties.

Only a person who has not already acted in the matter in question in another capacity may be appointed for this purpose by the Commission.

Any verbal or written information gathered by the person appointed under the first paragraph must remain confidential. He may not be compelled to divulge anything that has been revealed to him or that has come to his knowledge in the performance of his duties, or to produce before a court or before any body or person fulfilling a judicial or quasi-judicial function any document made or obtained in the performance of his duties. Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person shall have a right of access to any such document."

59. Section 124 of the said Act is amended

(1) by replacing, on 1 January 1991, the word "five" in the first line by the word "four";

(2) by replacing, on 1 January 1992, the word "four" in the first line by the word "three".

60. Section 125 of the said Act is amended by adding, at the end of the first paragraph, the following sentence: "The second and third paragraphs of section 123.3 apply for the purposes of this section."

61. Sections 126 and 127 of the said Act are replaced by the following sections:

"**126.** If no settlement is reached within the 30 days following the filing of the complaint with the Commission, the employee may, within the ensuing 30 days, apply in writing to the Commission to have his complaint deferred to the labour commissioner general. The labour commissioner general shall appoint a labour commissioner who shall make an inquiry and decide the complaint.

"**127.** The provisions of the Labour Code respecting the labour commissioner general, the labour commissioners, their decisions and the exercise of their jurisdiction, and section 100.12 of the said Code apply, adapted as required, except sections 15 to 19 and 118 to 137."

62. Section 128 of the said Act is amended by replacing the words "the arbitrator" in the first line of each of the first and second paragraphs by the words "the labour commissioner".

63. Section 129 of the said Act is amended by replacing the words "arbitration award" in the first line by the words "decision of a labour commissioner".

64. Sections 130 to 135 of the said Act are replaced by the following sections:

"**130.** The decision of a labour commissioner under this division is without appeal. It shall bind both the employer and the employee.

"**131.** A labour commissioner must file the original of his decision at the office of the labour commissioner general.

The clerk shall send forthwith a true copy of the decision to the parties and to the Commission."

65. Schedule I to the said Act is repealed.

66. The English text of the said Act is amended by replacing the words "executive officers" in sections 43 and 88 by the words "managerial personnel", and by replacing the words "an executive officer" in section 54 by the words "the managerial personnel".

NATIONAL HOLIDAY ACT

67. Section 2 of the National Holiday Act (R.S.Q., chapter F-1.1) is amended by replacing the figure "3" in the third line of the second paragraph by the figure "4".

68. Section 3 of the said Act is repealed.

69. Section 4 of the said Act is amended

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

"**4.** The employer must pay to the employee an indemnity equal to the average of his daily wages excluding overtime for the days worked during the complete period of pay preceding 24 June.";

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

"Notwithstanding the first paragraph, the indemnity paid to an employee remunerated mainly by commission must be equal to the average of his daily wages established from the complete periods of pay in the three months preceding 24 June."

ACT RESPECTING THE MINISTÈRE DE LA MAIN-D'OEUVRE ET DE LA SÉCURITÉ DU REVENU

70. Section 5.2 of the Act respecting the Ministère de la Main-d'oeuvre et de la Sécurité du revenu (R.S.Q., chapter M-19.1) is replaced by the following section:

"**5.2** The Minister, in accordance with such standards as the Government may establish by regulation, may pay an allowance to a person on maternity leave or on parental leave.

The regulation may prescribe the cases and conditions giving entitlement to the allowance and the terms and conditions of payment."

ACT TO AMEND THE LABOUR CODE AND VARIOUS LEGISLATION

71. Section 103 of the Act to amend the Labour Code and various legislation (1983, chapter 22) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

72. With the exception of the standards provided for in sections 81.4 to 81.17 and, where they relate to any such standard, the second, third and fourth paragraphs of section 74, paragraph 6 of section 89, Division IX of Chapter IV, Divisions I and II of Chapter V and Chapter VII of the Act respecting labour standards as amended by this Act, the labour standards introduced by this Act have no effect in respect of employees governed by a collective agreement within the meaning of the Labour Code in force on 1 January 1991 until the expiry of the collective agreement or until the right to strike or lock out, as the case may be, is obtained, or until 1 April 1991, whichever is the later.

Where the collective agreement or the Labour Code provides for the maintenance of the conditions of employment, the new labour standards, apart from the exceptions listed in the first paragraph, do not apply as long as the provision maintaining the conditions of employment is effective.

The first and second paragraphs also apply in respect of employees whose collective agreement within the meaning of the Labour Code is signed before 1 April 1991.

Where the parties to a collective agreement which expires on 1 January 1991 have by that date undertaken negotiations for the renewal of the collective agreement, the new labour standards introduced by this Act, apart from the exceptions listed in the first paragraph, apply to the employees governed by the said collective agreement only from 1 April 1991 or, if the expired collective agreement or the Labour Code provides for the maintenance of the conditions of employment, only when the provision maintaining the conditions of employment ceases to have effect, whichever is the later.

73. Where the Act respecting labour standards becomes applicable to an employee, a person or a body by the effect of section 2 or paragraph 1 or 2 of section 3 of this Act, the labour standards which do not apply by the effect of section 72 also include any labour standards that were not applicable to that employee, person or body before the coming into force of this Act.

74. The first paragraph of section 72 applies, adapted as required, to employees to whom a collective agreement decree within the meaning of the Act respecting collective agreement decrees applies on 1 January 1991, and to employees governed by a collective agreement decree adopted by the Government before 1 April 1991, until the expiry date of the collective agreement decree.

Where the collective agreement decree contains an automatic renewal clause, for the purposes of this section the collective agreement decree is deemed to expire one year after the first automatic renewal occurring after 1 January 1991, unless it is otherwise terminated before that date.

75. A labour standard contained in the Act respecting labour standards which applies to employees referred to in sections 72, 73 and 74 on 31 December 1990 shall continue to apply to those employees until the new labour standard introduced by this Act applies to them.

76. The provisions of the Act respecting labour standards as they read before being amended by sections 59 to 64 of this Act shall remain in force in respect of dismissals not made for good and sufficient cause made before 1 January 1991.

77. Sections 125 to 134 of the Act respecting labour standards as they read before being amended by sections 60 to 64 of this Act

apply to dismissals not made for good and sufficient cause made between 1 January 1991 and 31 May 1991.

However, notwithstanding section 135 of the Act respecting labour standards, the fees and expenses of the arbitrator shall, in such cases, be paid by the Ministère du Travail in accordance with the tariff established by regulation under section 103 of the Labour Code. The arbitrator shall send his letter of appointment as arbitrator in the case concerned to the Minister of Labour with his detailed account.

The Commission des normes du travail shall reimburse to the Ministère du Travail the fees and expenses paid in accordance with the second paragraph, upon being invoiced therefor.

78. The provisions relating to maternity leave contained in the Regulation respecting labour standards (R.R.Q., 1981, c. N-1.1, r. 3) that are consistent with sections 81.4 to 81.17 of the Act respecting labour standards, enacted by section 34 of this Act, shall remain in force until replaced or repealed.

79. The Government may, by regulation made before 1 January 1992, determine the categories of employees among the employees referred to in sections 41.1 and 74.1 of the Act respecting labour standards, enacted by sections 13 and 26 of this Act, to whom the said sections will apply at a later date.

The Government shall, in any such regulation, determine the date on which the said sections will apply in respect of each category.

80. The provisions of this Act will come into force on 1 January 1991, with the following exceptions:

(1) section 2, paragraph 1 of section 3, section 4, paragraphs 17 to 19 of section 30 of the Act respecting labour standards, enacted by section 10 of this Act, section 12, paragraphs 2 and 3 of section 16, sections 18 to 21, paragraph 3 of section 39, paragraph 1 of section 40 and section 65, which will come into force on 1 April 1991;

(2) sections 60 to 64, which will come into force on 1 June 1991;

(3) section 6, which will come into force on 1 July 1991;

(4) sections 13 and 26, which will come into force on 1 January 1992.