

NATIONAL ASSEMBLY

FIRST SESSION

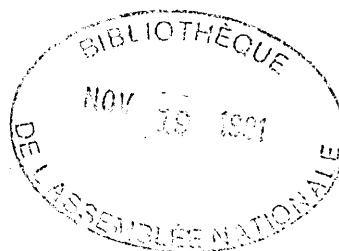
THIRTY-FOURTH LEGISLATURE

Bill 403

**An Act to amend the Courts of
Justice Act in matters relating to
the pension plan and social benefits**

Introduction

**Introduced by
Mr Daniel Johnson
Minister for Administration and the Public Service and
Chairman of the Conseil du trésor**



**Québec Official Publisher
1991**

EXPLANATORY NOTES

This bill amends the Courts of Justice Act to bring the pension plan of judges of the Court of Québec into conformity with the rules of the revised fiscal legislation in matters concerning retirement savings.

The bill first reduces the pension accrual rate from 2.8 % to 1.5 % per year of service for years subsequent to 31 December 1991 and increases to 35 the maximum number of years of service used for the purpose of calculating the pension. It also limits the annual salary taken into consideration for the calculation of benefits to the amount required to arrive at the defined benefit limit applicable under the Income Tax Act for years subsequent to 31 December 1991.

In addition, the bill introduces an actuarial reduction applicable to the amount of pension pertaining to years of service subsequent to 31 December 1991 in cases where a judge retires after 20 or after 25 years of service. In addition, it will be specified in the Act that the disability of a judge, for pension purposes, must be not only permanent but also total, and that the disability must be established on the basis of medical opinion after inquiry, by the Conseil de la magistrature.

The bill introduces a provision into the Courts of Justice Act allowing the Government to establish a supplementary benefits plan for persons who participate in the pension plan established under Part VI of the Act.

Finally, the bill enables the municipalities of Montréal, Laval and Québec to join the pension plans provided for under the Courts of Justice Act in respect of municipal judges, persons having acquired pension credits or persons receiving a pension under an equivalent pension plan in effect in those municipalities. Each municipality must, if it does not join these plans, establish a supplementary benefits plan equivalent to the plan established by the Government for judges of the Court of Québec.

Bill 403

An Act to amend the Courts of Justice Act in matters relating to the pension plan and social benefits

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

COURTS OF JUSTICE ACT

1. Section 118 of the Courts of Justice Act (R.S.Q., chapter T-16) is amended by replacing the words “that of his pension shall be deducted” in the third and fourth lines by the words “the amounts he receives as pension and, where that is the case, as supplementary benefits granted under the plan established pursuant to the second paragraph of section 122 shall be deducted”.

2. Section 122 of the said Act, amended by section 5 of chapter 44 of the statutes of 1990, is again amended by adding, at the end, the following paragraphs:

“It may also establish, in respect of judges to whom the pension plan established under Part VI applies, a plan providing for supplementary benefits payable from the date on which benefits become payable under the pension plan. The Government may include in that plan provisions concerning the payment of benefits to the spouse and children of a judge.

The annual benefits to which a judge is entitled under the supplementary benefits plan shall not, on the date they become payable, be greater than the amount by which the highest annual salary received by the judge while in office exceeds the annual benefits payable on the same date under the pension plan.

To determine the highest annual salary, the annual salaries which are taken into consideration are those fixed by orders made under section 115. However, the additional remuneration paid to a Chief Justice, Senior Associate Chief Justice, Associate Chief Justice or

Coordinating Judge, and any other remuneration paid to a judge on leave without pay or a judge to whom sections 131 to 134 apply, shall be excluded from those salaries.”

3. The said Act is amended by inserting, after section 122, the following sections:

“122.1 Benefits accumulated during the marriage under the supplementary benefits plan established under the second paragraph of section 122 shall form part of the family patrimony established under the Civil Code of Québec. In that respect, the Government may render all or some of the rules contained in or enacted pursuant to Part VI.2 applicable to the plan. It may also enact special rules concerning the determination and evaluation of the supplementary benefits so granted.

“122.2 The Commission administrative des régimes de retraite et d’assurances is responsible for the administration of the supplementary benefits plan.

If a difficulty arises in the application of a provision of that plan, the dispute may be submitted, within the year, to an arbitrator. For that purpose, section 245 shall apply.

“122.3 At least once every three years, the Commission shall cause an actuarial valuation of the supplementary benefits plan established under the second paragraph of section 122 to be prepared for the Minister of Justice by the actuaries it designates.

The cost of the plan shall be borne, in respect of judges of the Court of Québec, by the Government and, in respect of judges of the Municipal Courts to whom the plan provided for in Part VI applies, by each municipality, respectively.

The Government shall determine, by order, at intervals of not less than three years, the rate of contribution of the municipalities, which shall be based on the result of the actuarial valuation of the plan.

Each municipality shall pay its contribution to the Commission according to the rules, terms and conditions determined by the order establishing the plan; such rules, terms and conditions may fix the interest payable on late payments.”

4. Section 123 of the said Act is amended by replacing the figure “122” in the first line by the figure “122.3”.

5. Section 127 of the said Act is amended by adding the following paragraph:

"The contributions paid by the municipalities to the supplementary benefits plan established under the second paragraph of section 122 shall be paid into the consolidated revenue fund."

6. Section 225 of the said Act, replaced by section 7 of chapter 44 of the statutes of 1990, is amended by replacing the second paragraph by the following paragraph:

"The plan also applies to judges of the Municipal Court of Montréal, Laval or Québec if their respective municipalities have joined this plan pursuant to section 27 of chapter (*insert here the chapter number of Bill 403 of 1991*) of the statutes of 1991."

7. Section 227 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is amended

(1) by replacing the words "permanent disability defined in the first paragraph of section 93.1" in the second line of the first paragraph by the words "total and permanent disability preventing him from discharging the duties of his office";

(2) by adding, at the end of the first paragraph, the following sentence: "Such disability shall be established on the basis of medical opinion and after inquiry, by the Conseil de la magistrature.";

(3) by adding, at the end of the second paragraph, the following words: "or not later than 31 December of the year in which he reaches 71 years of age. In the latter case, his salary shall be reduced in accordance with section 118".

8. Section 228 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is amended by inserting the words "or, as the case may be, for an equivalent plan in effect in a municipality," after the word "Part" in the second line of paragraph 3.

9. Section 229 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is amended

(1) by adding, at the end of subparagraph 1 of the first paragraph, the words "or at the Municipal Court of a municipality which has joined this plan;"

(2) by replacing the word and figure "section 122" in the second line of subparagraph 4 of the first paragraph by the words "the first paragraph of section 122 or, as the case may be, under an equivalent plan in effect in a municipality which has joined this plan".

10. The said Act is amended by inserting, after section 229 as replaced by section 9 of chapter 44 of the statutes of 1990, the following section:

“229.1 A judge shall not accumulate service and shall not acquire entitlement to any additional amount of pension after 30 December of the year in which he reaches 71 years of age.”

11. Section 230 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is again replaced by the following section:

“230. The annual amount of a judge’s pension is equal to the total of the following amounts:

(1) the amount obtained by multiplying his average salary by 2.8 % per year of service prior to 1 January 1992;

(2) the amount obtained by multiplying his average salary by 1.5 % per year of service subsequent to 31 December 1991; that amount, however, shall not exceed the amount obtained by multiplying the defined benefit limit applicable under the Income Tax Act (Statutes of Canada) for the year in which he retires, by the number of years or parts of a year of credited service subsequent to 31 December 1991.

For the purposes of the first paragraph, the years of service of a judge are taken into consideration up to 35. If that number exceeds 35, the most recent years of service shall not be taken into consideration.”

12. Section 231 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is amended

(1) by replacing the first sentence of the second paragraph by the following sentence: “To determine the average salary, the annual salaries taken into consideration are those of all the years of service of the judge as fixed in the orders made under section 115 up to the annual salary required, for the purposes of subparagraph 2 of the first paragraph of section 230, to arrive at the defined benefit limit applicable for each year under the Income Tax Act (Statutes of Canada).”;

(2) by replacing the words “in computing the average salary” in the eighth and ninth lines of the second paragraph by the words “from those salaries”.

13. Section 232 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is amended by inserting the words “or, as

the case may be, for an equivalent plan in effect in the municipality," after the word "Part" in the second line of the second paragraph.

14. The said Act is amended by inserting, after section 232 as replaced by section 9 of chapter 44 of the statutes of 1990, the following section:

"232.1 The pension of a judge who has retired under paragraphs 2 and 3 of section 228 before his age and years of service total 80 shall be reduced for its duration by the amount obtained by multiplying the amount of the pension established pursuant to subparagraph 2 of the first paragraph of section 230 and sections 231 and 232 by 0.25 % per month, computed for each month comprised between the date on which the pension is granted and the date on which the age and years of service of the judge would have totalled 80."

15. Section 233 of the said Act, replaced by section 9 of chapter 44 of the statutes of 1990, is amended by adding, at the end, the words "or at the latest from 31 December of the year in which he reaches 71 years of age".

16. Section 237 of the said Act, replaced by section 11 of chapter 44 of the statutes of 1990, is amended

(1) by inserting the words "or, as the case may be, for an equivalent plan in effect in the municipality" after the word "Part" in the third line;

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

"In addition, when the age and years of service of the judge do not total 80, the pension he would have received is, for the purpose of calculating his spouse's pension, reduced in accordance with section 232.1."

17. Section 244.2 of the said Act, enacted by section 11 of chapter 44 of the statutes of 1990, is replaced by the following section:

"244.2 A judge who has retired with a pension by reason of a disability and who is, before 31 December of the year in which he reaches 71 years of age, reappointed to judicial office at the court at which he held office, ceases to receive his pension.

The years and parts of a year of service he accumulates are added to those already credited to him. However, if he accumulates less than

three years, the average salary used as the basis for computing his new pension is computed on the basis of the annual salaries fixed by orders made under section 115 for the three years preceding the date on which he ceased to hold office, or, as the case may be, immediately preceding 31 December of the year in which he reached 71 years of age. In the case of the application of subparagraph 2 of the first paragraph of section 230, the annual salaries are taken into consideration up to the amount of annual salary required to arrive at the defined benefit limit applicable for each year under the Income Tax Act (Statutes of Canada)."

18. Section 244.3 of the said Act, enacted by section 11 of chapter 44 of the statutes of 1990, is replaced by the following section:

"244.3 A retired judge who is authorized by the Government to exercise judicial functions shall continue to receive his pension, and his salary shall be reduced in accordance with section 118. However, the judge does not acquire entitlement to any additional amount of pension.

A retired judge who receives a salary for holding any other office with the Gouvernement du Québec or, in the case of a judge of a Municipal Court, any other office with the municipality, shall continue to receive his pension, and his salary shall be reduced in accordance with section 118."

19. Section 244.7 of the said Act, enacted by section 11 of chapter 44 of the statutes of 1990, is amended by replacing the last two lines by the words "plan established under the first paragraph of section 122 or, as the case may be, under an equivalent plan in effect in a municipality which has joined this plan, shall be considered as having effectively been paid".

20. Section 244.11 of the said Act, enacted by section 11 of chapter 44 of the statutes of 1990, is amended by replacing the figure "25" in the third line of subparagraph 2 of the first paragraph by the figure "35".

21. Section 246.2 of the said Act, replaced by section 14 of chapter 44 of the statutes of 1990, is amended by adding the following paragraph:

"It also applies to persons who, on 1 January 1992, are receiving a pension under the equivalent pension plan in effect in the municipality of Montréal, Laval or Québec if the municipality concerned has joined this plan pursuant to section 28 of chapter *(insert here the chapter number of Bill 403 of 1991)* of the statutes of 1991."

22. Section 246.9 of the said Act is amended by inserting the words "or, in the case of a person referred to in the second paragraph of section 246.2, any office with a municipality which has joined this plan," after the word "Québec" in the third line.

23. Section 246.11 of the said Act, replaced by section 20 of chapter 44 of the statutes of 1990, is amended by inserting the words "the first paragraph of" after the word "under" in the second line of subparagraph 4 of the first paragraph.

24. Section 246.26 of the said Act, enacted by section 23 of chapter 44 of the statutes of 1990, is amended

(1) by replacing the word "The" in the first line of the second paragraph by the words "With respect to the judges of the Court of Québec, the";

(2) by adding, after the second paragraph, the following paragraph:

"With respect to the judges of Municipal Courts to whom the pension plan provided for in Part VI applies, the cost of that plan shall be borne by each municipality, respectively."

25. The said Act is amended by inserting, after section 246.26, the following section:

"246.26.1 The Government shall determine, by regulation, at intervals of not less than three years, the rate of contribution of the municipalities, which is based on the result of the actuarial valuation of the pension plan provided for in Part VI. Such a regulation may have effect from 1 January of the year in which it is adopted.

Each municipality shall pay to the Commission its contribution to the pension plan provided for in Part VI according to the rules, terms and conditions of payment which the Government determines by regulation. Such rules may fix the interest payable on late payments."

26. Section 246.27 of the said Act, enacted by section 23 of chapter 44 of the statutes of 1990, is amended by inserting the words "and from the municipalities having joined the pension plan provided for in Part VI," after the word "Justice" in the second line.

TRANSITIONAL AND FINAL PROVISIONS

27. The municipalities of Montréal, Laval and Québec and the Commission administrative des régimes de retraite et d'assurances may, until 31 December 1992, and with the authorization of the Government in the case of the latter, enter into an agreement which permits the municipality to join the pension plan provided for in Part VI of the Courts of Justice Act in respect of the following persons:

- (1) the judges of its Municipal Court in office on 1 January 1992;
- (2) any person who, on that date, is entitled to a deferred pension or to a pension under the equivalent pension plan in effect in the municipality.

However, such an agreement may, if the municipality so elects, permit that municipality to join the plan in respect only of municipal judges in office on 1 January 1992.

28. The municipalities of Montréal, Laval and Québec and the Commission administrative des régimes de retraite et d'assurances may, until 31 December 1992, and with the authorization of the Government in the case of the latter, enter into an agreement which permits the municipality to join the pension plan provided for in Part VI.1 of the Courts of Justice Act in respect of any person who, on 1 January 1992, is receiving a pension under the equivalent pension plan in effect in the municipality.

29. The amounts to be transferred by the said municipalities to the Commission administrative des régimes de retraite et d'assurances under agreements entered into pursuant to sections 27 and 28 are established on the basis of the value of benefits determined according to assumptions and methods consistent with generally recognized actuarial principles.

Such amounts shall be paid into the consolidated revenue fund.

30. Every agreement entered into pursuant to sections 27 and 28 shall have effect from 1 January 1992.

31. Notwithstanding subparagraph 1 of the first paragraph of section 229 of the Courts of Justice Act, amended by section 9 of this Act, where a judge of the Court of Québec formerly held office as a municipal judge in a municipality that has joined the pension plan provided for in Part VI of the said Act, but no longer holds such an office on 1 January 1992, the years in which he held such an office may

be taken into account for the purposes of the said pension plan only in accordance with a transfer agreement entered into pursuant to section 246.24 of the said Act.

32. Any municipality mentioned in section 27 which does not join the pension plan provided for in Part VI of the Courts of Justice Act shall establish a supplementary benefits plan that is equivalent to the plan established by the Government under the second paragraph of section 122 of the said Act. The supplementary benefits plan shall apply from 1 January 1992.

Section 122.1 of the said Act, adapted as required, applies to such a plan.

33. The supplementary benefits plan established under the second paragraph of section 122 of the Courts of Justice Act shall apply, adapted as required, to persons other than judges of the Court of Québec who have opted for the plan provided for in Part VI of the said Act in accordance with the legislative provisions granting them the right to that option.

34. This Act comes into force on 1 January 1992.