



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 116
(*Reprint*)

Supplemental Pension Plans Act

Introduction

Introduced by
Mr André Bourbeau
Minister of Manpower and Income Security

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EXPLANATORY NOTES

This bill replaces the Act respecting supplemental pension plans, which was passed in 1965. The proposed legislation constitutes an overall revision of the legislative requirements applicable to private pension plans.

The object of this bill is to provide better protection for the pension benefits of employees who are members of a private pension plan. To that end the bill establishes rules governing the establishment, operation and administration of pension plans, prescribes a set of basic rights granted to plan members and provides for measures of control and supervision of pension plans.

Chapters I to VII deal, in particular, with the nature, establishment and coming into force of pension plans and their registration with the Régie des rentes du Québec. Those chapters acknowledge that low-income employees and part-time employees are entitled to become members of a pension plan. They also set forth the benefits to which members are entitled and, for that purpose, new vesting rules for deferred pensions after a short period of membership (two years) and new eligibility rules for early retirement pensions are established. They also include provisions under which the spouse or assigns of a member will be entitled to a pension in the event of the member's death. Standards governing the integration of private plans and public plans are prescribed and the right of every plan member to obtain the transfer of the value of his benefits to another plan is acknowledged. Finally, provisions are made to set the minimum contribution that every employer who is a party to a plan will be required to pay, and to ensure minimum interest on any contribution paid into the plan.

Chapter VIII sets out and strengthens the rights of every member to obtain information concerning the benefits he has accumulated under the plan, in particular, the right to obtain an annual statement of benefits.

Chapter IX specifies the funding and solvency requirements applicable to uninsured plans.

Chapter X establishes the rules governing the administration of a pension plan, and provides that every plan must be administered by a pension committee which will include plan members or representatives of plan members. It defines the rights, obligations and liabilities of the pension committee and of each of its members. Division II of that chapter establishes the rules that will govern the investment of a plan's assets. Finally, Division III deals with the placing of a pension plan under provisional administration.

Chapter XI sets out the conditions governing the division of a plan and the merging of several plans. Chapter XII sets out the conditions governing the total or partial termination or the wind-up of a plan and the payment of the benefits of members or beneficiaries affected by a plan termination.

Finally, the bill provides that every decision or order made by the Régie may be reviewed or re-examined. It confers regulatory powers on the Régie in addition to the other powers necessary for the carrying out of its functions. The bill also defines what constitutes an offence and prescribes the applicable penalties. Lastly, the bill enacts the required transitional and miscellaneous provisions. The provisions of the bill are to have force of law from 1 January 1990.

ACTS AMENDED BY THIS BILL:

- the Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2);
- the Cities and Towns Act (R.S.Q., chapter C-19);
- the Code of Civil Procedure (R.S.Q., chapter C-25);
- the Municipal Code de Québec (R.S.Q., chapter C-27.1);
- the Act respecting labour standards (R.S.Q., chapter N-1.1);
- the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);
- the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- the Professional Syndicates Act (R.S.Q., chapter S-40).

Bill 116

Supplemental Pension Plans Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPLICATION AND INTERPRETATION

1. This Act applies to pension plans provided

(1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;

(2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.

2. This Act does not apply to

(1) a pension plan to which the employer is not required to make contributions. However, it applies to a pension plan where membership therein is a condition precedent to membership in another plan to which an employer is required to make contributions or, conversely, where membership therein is conditioned by membership in that other plan; where that is the case, such pension plans are considered to constitute a single pension plan for the purposes of this Act;

(2) a pension plan established for employees who are also members of a plan governed by this Act, if their employer makes contributions to both plans in their respect, and if, under the terms of the other plan, they are entitled to benefits at least equal to the maximum benefits which may be paid under the terms of a registered retirement plan defined in section 1 of the Taxation Act (R.S.Q., chapter I-3);

(3) an employees' profit sharing plan or a deferred profit sharing plan referred to in Titles I and II of Book VII of Part I of the Taxation Act;

(4) a pension plan established by an Act, unless such Act renders the plan subject to this Act.

The Government may, by regulation and in the circumstances it determines, exempt any class of pension plans from the application of all or part of this Act.

3. For the purposes of this Act,

“**actuary**” means any member of the Canadian Institute of Actuaries having the title of “Fellow” or a status recognized as equivalent by such Institute;

“**accountant**” means any person who, being a member of a professional corporation of accountants listed in Schedule I to the Professional Code (R.S.Q., chapter C-26), is authorized under the Act constituting the corporation to act as an accountant for the purposes of a provision of this Act.

4. For the purposes of this Act, any person who avails himself of the services of a worker who is not an employee and makes contributions to a pension plan in respect of such worker is considered to be the worker's employer.

5. Any provision of a pension plan which is incompatible with this Act is null.

However, a pension plan may contain provisions that are more advantageous to members or beneficiaries than those contained in this Act.

CHAPTER II
PENSION PLANS

DIVISION I

NATURE

§ 1.—*General provisions*

6. A pension plan is a contract under which pension benefits are provided to the member, under given conditions and at a given age, the funding of which is ensured by contributions payable either by the employer only, or by both the employer and the member.

Every pension plan, with the exception of insured plans, shall have a pension fund into which, in particular, contributions and the income derived therefrom are paid. The pension fund shall constitute a trust patrimony appropriated to the payment of the refunds and benefits to which the members and beneficiaries are entitled.

§ 2.—*Types of plans*

7. A defined contribution pension plan is a plan under which employer contributions and, where applicable, member contributions, or the method used for calculating them, are set in advance and the normal pension payable is based on the amounts credited to the member.

A defined benefit pension plan is a plan under which the normal pension payable is either a set amount, independent of the member's remuneration, or an amount corresponding to a percentage of the member's remuneration.

A defined benefit-defined contribution pension plan is a plan under which employer contributions and, where applicable, member contributions and the normal pension, or the method used for calculating them, are set in advance.

8. A contributory pension plan is a plan to which member contributions are paid by the members.

9. An insured pension plan is a plan under which refunds and benefits are at all times guaranteed by an insurer.

10. Only an insurer who is authorized to carry on life insurance business in Québec or elsewhere in Canada where an agreement

referred to in section 244 is applicable may guarantee the refunds or benefits provided under a pension plan.

11. A multi-employer pension plan is a plan in which the members are the employees of two or more employers.

However, a plan is not considered to be a multi-employer pension plan if the following conditions are met:

(1) the employers who are parties to the plan are either subsidiaries of the same parent company or a parent company and its subsidiaries;

(2) the plan provides that the subsidiaries that are parties to the plan and the parent company agree that the plan not be considered to be a multi-employer pension plan.

12. A parent company is a legal person which controls another company, which is, by that fact, a subsidiary of the parent company.

A legal person controls another legal person if it holds, directly or indirectly, otherwise than as security, securities entitling it to elect in all cases a majority of the directors of that other legal person.

DIVISION II

ESTABLISHMENT AND EFFECTIVE DATE

13. A pension plan becomes effective on the earlier of the following dates:

(1) the date from which, for the purposes of determining the normal pension, the employees' service is taken into account as it is completed;

(2) the date on which member contributions begin to be collected.

14. Unless an extension is granted by the Régie des rentes du Québec, any person who establishes a pension plan shall set it down in writing not later than ninety days after the day on which the plan becomes effective.

The text of the plan shall indicate

(1) the name and address of the employer who is a party to the plan;

(2) the number of members required to constitute the pension committee responsible for the administration of the plan, together with the conditions and time limits applicable to the designation or replacement of the members;

(3) the requirements for membership and, in the case of a plan in which membership is optional, the withdrawal requirements;

(4) the contributory or non-contributory nature of the plan;

(5) the optional or compulsory nature of membership in the plan;

(6) in the case of a multi-employer pension plan, the conditions for participation and for withdrawal of an employer;

(7) the normal retirement age;

(8) where refunds or benefits are guaranteed, the name of the insurer;

(9) the member and employer contributions, or the method used for calculating the contributions;

(10) in the case of a defined benefit plan, the normal pension or the method used for calculating the normal pension;

(11) the nature of the refunds and benefits, the method used for calculating benefits or refunds, if any, and the conditions to be met to be entitled thereto;

(12) if applicable, the powers under which the pension committee is authorized to transfer benefits accumulated by a member under the plan or any asset of the plan to another plan, and the rules applicable to such a transfer;

(13) the effective date of the plan;

(14) the fiscal year of the plan;

(15) the conditions on which and the person or persons by whom the plan may be amended.

15. Any insurance contract under which an insurer guarantees refunds and benefits provided by a pension plan is an integral part of the plan; however, where a plan is not insured, the contract is part of the plan only to the extent that the recipient of the insured refunds or benefits continues to be a member of the said plan.

16. Where a pension plan becomes effective before it is registered with the Régie des rentes du Québec, the employer or, where a pension committee has been formed, the pension committee shall notify the Régie thereof in writing within thirty days.

The notice shall indicate, in addition to the name and address of the employer who is a party to the plan, the effective date of the plan and, if applicable, the date on which member contributions began to be collected. The notice shall also indicate in a concise manner

- (1) the type of plan established;
- (2) the normal pension or the method used for calculating the normal pension;
- (3) the member or employer contributions or the method used for calculating the contributions;
- (4) where applicable, the name and address of the person to whom powers have been delegated.

17. The person responsible for the administration of a pension plan which has become effective before being registered shall, on receiving contributions, deposit them with a bank, an insurer or an institution holding a licence issued in accordance with the Deposit Insurance Act (R.S.Q., chapter A-26) and keep such contributions on deposit until the plan is registered.

The deposit shall be repayable on demand or upon notice of not more than thirty days.

18. No pension plan shall cease to be effective before the date on which the Régie revokes the plan's registration, in the cases referred to in section 32.

No pension plan which is not registered shall cease to be effective before the date fixed by the Régie. The Régie may, in that case, order that the plan be wound up on the conditions and within the period it specifies.

DIVISION III

AMENDMENT

19. No amendment to a pension plan may become effective before the date it is registered with the Régie, except in the following cases:

(1) where the object of the amendment is the participation of another employer in a multi-employer plan, in which case the amendment becomes effective on the date determined pursuant to section 13;

(2) where the amendment is to become effective on a given date prior to its registration, in which case the amendment may, provided it is registered, become effective on that date.

20. No amendment to a pension plan which reduces the amount or value of the benefits of members or beneficiaries may become effective, if made under a collective agreement or an arbitration award in lieu thereof or rendered compulsory by an order or decree, before the date on which the collective agreement, award or order becomes effective and, in other cases, before the date the notice provided for in section 26 is sent or published.

However, the limit set under the first paragraph in respect of the effective date of an amendment reducing benefits does not apply

(1) where the amendment is made to allow the plan to remain a registered retirement plan within the meaning of section 1 of the Taxation Act;

(2) where the affected members or beneficiaries have agreed to the amendment, provided the Régie has authorized the amendment.

If the amendment relates to the normal pension, the method used for calculating the normal pension or any other benefit established on the basis of such pension or method, the amendment may affect only the service that is subsequent to the effective date of the amendment.

21. No amendment to a pension plan may reduce a benefit the payment of which began prior to the date on which the amendment became effective.

22. Any amendment made to a pension plan for the purpose of converting the plan into a plan of another type or substituting a new employer for the former employer is subject to the authorization of the Régie and the conditions it may fix.

In addition, an amendment made for the purpose of converting the plan into a plan of another type shall, to be authorized, provide that the value of the benefits of any member or beneficiary that are attributable to service credited under the plan before its conversion

will be equal to or greater than the value to which he would have been entitled had the plan been totally terminated on the date on which the amendment is to become effective.

23. The service credited to the members under a pension plan prior to an amendment referred to in section 22 shall be taken into account for the vesting of benefits under the amended plan.

For the purposes of section 34, the remuneration received or, as the case may be, the hours of work completed prior to such amendment shall also be taken into account.

CHAPTER III

REGISTRATION OF PENSION PLANS AND AMENDMENTS

24. Every pension plan and every amendment to a pension plan shall be registered with the Régie.

The employer or, where a pension committee has been formed, the pension committee shall file an application for registration with the Régie, accompanied with

(1) a copy of the plan or amendment, certified by the employer or by the committee, and, where refunds or benefits are guaranteed, a copy of the insurance contract, certified by the insurer;

(2) the name and address of the employer or, in the case of a pension committee, the names and addresses of the committee members;

(3) the employer's written acknowledgement of the obligations incumbent upon him under the plan or amendment, unless the pension committee attests that it has obtained such acknowledgement from the employer and that it can, upon request, file it with the Régie;

(4) in the case of a pension plan subject to the provisions of Chapter IX as to funding and solvency, the report prescribed by section 114 with respect to the actuarial valuation of the plan;

(5) in the case of an insured plan, a report prepared by the insurer and containing the information prescribed by regulation;

(6) any other document or information prescribed by regulation;

(7) the fees prescribed by regulation.

25. Unless an extension is granted by the Régie, an application for the registration of a pension plan shall be filed not later than ninety days after the date on which the plan becomes effective; an application for the registration of an amendment whose object is the participation of another employer in a multi-employer pension plan shall be filed not later than the last day of the twelfth month following the month in which the amendment becomes effective.

26. A pension committee which proposes to apply for the registration of an amendment shall inform the active members thereof

(1) by transmitting to each active member a written notice setting out the object of the proposed amendment and stating that the text of the amendment may be examined at the committee's office and at the employer's establishment specified, which must be located within 150 km of the member's place of employment or, where the employer has no establishment within that distance, that the text may be obtained, without charge, on written request; or

(2) with the authorization of the Régie, by sending the notice to the employer who, on receipt thereof, shall post it in a conspicuous place within his establishment, in an area ordinarily frequented by the members, or by publishing it in a newspaper circulated in the localities where at least half of the members are employed. However, the means of information provided for in this subparagraph cannot be used if the object of the proposed amendment is

- a reduction of benefits;
- the allocation of a surplus of assets or the appropriation of such surplus to the payment of contributions;
- the merging of the assets and liabilities of several plans;
- the division of the plan's assets and liabilities among several plans;
- the conversion of the plan into a plan of another type.

A copy of the notice shall also be transmitted to the Régie.

This section does not apply where the amendment is made pursuant to a collective agreement or an arbitration award in lieu thereof, or is rendered compulsory by an order or decree.

27. The Régie shall send, to the applicant whose application for registration meets the requirements prescribed by this Act, an

acknowledgment of receipt indicating the date of receipt of the application.

If the application for registration is incomplete, the Régie shall forthwith notify the applicant, and specify the information which remains to be filed.

28. The Régie may, after giving the interested parties an opportunity to submit their views, refuse to register a pension plan, or part thereof, or an amendment which, in its opinion, is not in conformity with this Act. It shall inform the parties by means of a written notice specifying the reasons for its refusal.

29. The Régie shall issue a certificate of registration for each pension plan or amendment registered by it.

30. Every pension plan or amendment in respect of which an application for registration has been acknowledged is deemed to be registered if, ninety days after the date indicated in the acknowledgment, the applicant has not received from the Régie a request for additional information, a notice extending the period of examination of the application, a notice of refusal or a certificate of registration.

31. The registration of a pension plan or of an amendment does not constitute proof of its conformity with this Act.

32. The Régie may revoke the registration of a pension plan in either of the following cases:

(1) if, by reason of a transfer resulting from a conversion under section 22 or a division or merger under Chapter XI or by reason of the total termination of the plan in accordance with Chapter XII, the members or beneficiaries no longer have any benefits under the plan or this Act, and the plan no longer holds any assets;

(2) if the plan ceases to be governed by this Act.

Moreover, the Régie may, after giving the interested parties an opportunity to submit their views, revoke the registration of any part of the plan or of an amendment that is not in conformity with this Act.

The Régie shall notify the interested parties of any revocation of registration by means of a written notice specifying the reasons therefor.

CHAPTER IV

MEMBERSHIP

33. An employee eligible for membership in a pension plan becomes a member of the plan from the first of the following:

(1) when contributions to the plan are paid by the employee or by the employer on behalf of the employee;

(2) when the employee meets the membership requirements set out in the plan.

The employee shall remain a member until all benefits accumulated by him under the plan are paid, in particular, by means of a transfer to another plan, or upon termination of the plan. However, where the benefits are paid, otherwise than pursuant to section 97 or 99, by the purchase of a pension guaranteed by an insurer, the person entitled to such benefits shall nonetheless remain a member of the original plan.

34. Unless another plan providing similar benefits in which he is eligible for membership is established, an employee is entitled to become a member of a pension plan — and is required to do so in the case of a compulsory plan — if his employment is similar or identical to that of members belonging to the class of employees for whom the plan is established and if, in the calendar year preceding his application for membership, he met either of the following requirements:

(1) he received from the employer a remuneration equal to or greater than 35 per cent of the Maximum Pensionable Earnings, established for the reference year in accordance with the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);

(2) he completed at least seven hundred hours of employment with the employer.

Where an employee has been employed by two or more employers participating in a multi-employer pension plan, the minimum remuneration required shall be determined on the basis of the overall remuneration from, or the overall hours of work for, each of the participating employers, in either of the following cases:

(1) the employees eligible for membership in the plan are governed by the same collective agreement or arbitration award in lieu thereof;

(2) the participating employers are a parent company and its subsidiaries or subsidiaries of the same parent company.

35. The Régie may order a pension committee to accept, as member of the plan, every employee who meets the requirements set out in section 34

(1) where it is of the opinion that, in view, in particular, of the nature and requirements of the employment concerned, those of the elements serving to determine the class of employees for whom the plan is established which are invoked as grounds to dismiss the employee's application for membership are unreasonable;

(2) where there is a dispute as to whether or not the employee belongs to the class of employees for whom the plan is established.

36. For the purposes of this Act, every member of a pension plan is considered to be an active member

(1) until he ceases to be a member in accordance with the withdrawal requirements or until he no longer meets the requirements for membership;

(2) until his period of continuous employment, as defined in section 54, is terminated or, where the plan provides that, despite such termination, the member continues to be a member for a given period, until the end of that period, which may in no case, notwithstanding the second paragraph of section 5, exceed twenty-four consecutive months;

(3) until he dies.

CHAPTER V

CONTRIBUTIONS

37. The member contribution is the contribution that an active member is required to pay or the amount he elects to pay with a concurrent contribution by the employer.

The employer contribution is the contribution that the employer is required to pay.

An additional voluntary contribution is the amount that a member elects to pay without a concurrent contribution by the employer.

38. A current service contribution is the amount that the employer and, as the case may be, the active members are required

to pay to ensure payment of the refunds and benefits provided by the pension plan in respect of service completed during a fiscal year of the plan and credited under the plan.

39. The employer shall, in each fiscal year of the pension plan, pay as employer contributions an amount which, when added to the member contributions, is equal to or greater than,

(1) in the case of an uninsured plan, the sum of the current service contribution determined in accordance with sections 119 and 120 and the amortization amounts determined pursuant to section 126;

(2) in the case of an insured plan, the current service contribution as established in section 40.

In the case of a multi-employer plan, the employer contribution shall be paid jointly by the employers who are parties to the plan.

40. In the case of an insured plan, the current service contribution shall correspond to the premium required by the insurer to guarantee the refunds and benefits to which the members are entitled in respect of service completed in any fiscal year of the plan and credited under the plan.

Furthermore, where an insurer guarantees refunds and benefits in respect of service credited for a period prior to the current fiscal year of the plan, the required premium shall, to ensure that the plan remains insured, be paid to the insurer in a lump sum as soon as the service is credited or the related benefits are improved under the plan.

41. The employer contribution shall be paid in as many monthly payments as there are months in the fiscal year of the plan, and not later than the last day of the month following the month for which a payment is made.

The monthly payments shall be of equal amounts. However, if they relate to the current service contribution, the monthly payments may represent a rate of the remuneration or a percentage of the total payroll for the active members; the rate or proportion shall be uniform unless it is established by reference to a variable authorized by the Régie.

Where the employer contribution is not determined at the beginning of the fiscal year, the employer shall, until it is determined, continue to pay the monthly payments fixed for the preceding fiscal year.

42. Where the amortization period for an unfunded actuarial liability begins or ends in the course of a fiscal year of the plan, the amortization amount for that year, determined under section 124, shall be paid in as many monthly payments as there are months in the amortization period.

43. Every person or body who or which collects member contributions or additional voluntary contributions shall, on or before the last day of the month following the month in which they are received, pay such contributions into the pension fund on behalf of the members or, in the case of an insured plan, to the insurer.

44. All member contributions and additional voluntary contributions and, in the case of a defined contribution plan, all employer contributions shall bear interest, from the first day of the month following the month in which they are payable into the pension fund or to the insurer,

(1) in the case of an uninsured plan other than a defined contribution plan, at the rate of return derived from the investment of the plan assets, less investment expenses and administration costs, or, if the plan so provides, at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada;

(2) in the case of a defined contribution plan, at the rate of return derived from the investment of all the assets of the plan or, where the plan so provides, of only such part of the assets as may be related to a particular group of members, less investment expenses and administration costs;

(3) in the case of an insured plan, at the monthly rate referred to in subparagraph 1 or, if the plan so provides, at the rate of return derived from the investment of the insurer's assets that are not included in the separate groups of assets constituted by the insurer, less, in the last case, investment expenses and administration costs.

However, if the plan provides that the members may select the investments to be made with all or part of the contributions, all investments so selected shall, for the purposes of subparagraphs 1 and 2 of the first paragraph, be excluded from the plan assets and the contributions so invested shall bear interest at the rate of return on such investments.

The provisions of this section which are applicable to the contributions paid under a defined contribution plan also apply to the

contributions paid under terms in a defined benefit plan that are identical to those of a defined contribution plan.

45. Despite subparagraph 2 of the first paragraph of section 44, employer contributions paid under a defined contribution pension plan may, if the plan so provides, bear interest at the rate of return on the investment of the contributions paid by the members under that plan or another pension plan which may or may not be governed by this Act, insofar as the investment is decided by the members.

46. Unless provided in the plan, the method used for calculating the rates of return and the method used for applying the monthly rate of interest shall, for the purposes of sections 44 and 45 be determined by the actuary or the accountant selected by the pension committee; in the case of an insured plan, the methods shall be determined by the insurer.

47. Where a member or beneficiary has become entitled to a benefit under the terms of the pension plan,

- additional voluntary contributions,

- member or employer contributions paid under a defined contribution plan or under terms in a defined benefit plan that are identical to those of a defined contribution plan, and

- member contributions above the limit set by section 60,

shall continue to bear interest at the rate prescribed by section 44 or 45 until such contributions are transferred in accordance with section 97 or 99 or are refunded, or until an additional pension is purchased with such contributions as provided in section 83.

48. Unless a pension plan or, in the case of an insured plan, an insurance contract sets a higher rate of interest, any contribution that has not been paid into the pension fund or to the insurer shall bear interest, from the date of default, at the rate prescribed by section 44 or 45.

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

50. The employer shall, on remitting the contributions, inform the pension committee or, in the case of an insured pension plan, the

insurer, of the reason for any significant variation in the contributions payable into the pension fund or to the insurer.

51. The pension committee and, in the case of an insured pension plan, the insurer, shall notify the Régie of any unpaid contribution within sixty days after it becomes due.

52. Unless they have exercised the prudence, diligence and care that a reasonable person would have exercised in comparable circumstances or unless, in the same circumstances they were unaware of the default, the directors of a legal person which, as an employer, is a party to a pension plan, shall be solidarily liable for contributions which become due and remain unpaid during their term in office, up to a contributory period of six months.

In the case of a multi-employer pension plan that is not considered as such pursuant to section 11, the directors of a subsidiary are liable for the contributions only if the parent company fails to pay the contributions referred to in the first paragraph. Where the directors of the subsidiary also fail to pay the contributions for which they are liable under this paragraph, the directors of the parent company become liable for the contributions.

The six-month limit set out in the first paragraph does not apply where the pension fund is managed by the employer.

53. A director shall be liable under section 52 only in either of the following cases:

(1) where the legal person has been prosecuted within two years after the date the unpaid contribution became due and full satisfaction of the amount awarded by judgment was not obtained upon execution;

(2) where the legal person was, within two years of the date the unpaid contribution became due, the subject of a winding-up order or became bankrupt within the meaning of the Bankruptcy Act (R.S.C., 1985, chapter B-3) and the claim filed has not been discharged.

CHAPTER VI

REFUNDS AND BENEFITS

DIVISION I

GENERAL PROVISIONS

54. The period of continuous employment of an employee is the period during which the employee is employed by an employer, regardless of periods of temporary interruption.

A change of employer does not, for the purposes of a pension plan, interrupt the period of continuous employment of an employee, provided the Régie authorized the transfer of obligations in the cases referred to in section 22 or in Chapter XI.

In the case of a multi-employer pension plan, even where it is not considered as such pursuant to section 11, a change of employer does not interrupt the period of continuous employment of an employee if the former employer and the successor employer are parties to the plan.

55. The credited service of a member is the service counted under the terms of a pension plan for the vesting or calculation of benefits.

56. Where a multi-employer plan, even a plan not considered as such pursuant to section 11, is partially terminated in accordance with Chapter XII, any service credited under the plan before the date of termination to any member affected by the termination who remains an active member after that date shall be counted for vesting purposes.

57. Unless approved by the Régie,

- employer contributions paid under a defined contribution plan or under terms in a defined benefit plan identical to those of a defined contribution plan,

- the method used for calculating the employer contributions,

and

- the method used for calculating the normal pension payable under the terms of a defined benefit plan or a defined contribution-defined benefit plan,

shall not, with respect to members of the same class of employees and for the same period of credited service, vary according to the number of years of employment or of credited service.

58. Every pension paid under a pension plan shall be a life pension and shall not be paid in any other form during the lifetime of the member or, in the case of a spouse's pension, during the lifetime of the spouse except for that fraction of the pension which, under the terms of the pension plan, must be paid to the member or beneficiary until he is eligible for any benefit, other than an early retirement pension, payable under the Act respecting the Québec Pension Plan, the Canada Pension Plan (R.S.C., 1985, chapter C-8), the Old Age Security Act (R.S.C., 1985, chapter O-9) or an income security program prescribed by regulation.

59. The periodic amounts payable as pension benefits shall be equal unless

(1) the pension is replaced by another life pension referred to in section 91, the amount of which may vary each year;

(2) each payable amount is uniformly adjusted by reason of a variation in an index used in determining the pension or by reason of options authorized by subparagraphs 1 to 4 and 6 of the first paragraph of section 92;

(3) the pension is replaced by a lump sum paid pursuant to subparagraph 4, 5 or 6 of the first paragraph of section 92.

60. The member contributions paid by a member, including accrued interest, shall not be used to pay more than 50 per cent of the value

(1) of any pension benefit to which the member becomes entitled, including benefits related thereto;

(2) of any benefit to which a beneficiary becomes entitled, where the member dies before becoming entitled to a pension.

This section does not apply

(1) to pension benefits accrued under the terms of a defined contribution pension plan;

(2) to pension benefits accrued under terms in a defined benefit pension plan which are identical to those of a defined contribution pension plan;

(3) to benefits resulting from a transfer of benefits or assets under Chapter VII;

(4) to the additional pension referred to in section 78 or 83.

61. The value of the benefits to which section 60 applies shall be determined at the date of vesting, according to assumptions and methods consistent with generally accepted actuarial principles. Such assumptions and methods shall be transmitted to the Régie by the pension committee not later than thirty days before they are applied.

Where a member is entitled, pursuant to Chapter VII or under the terms of a pension plan, to transfer his pension benefits to another plan, the value of the benefits may, however, be determined on the basis of assumptions and methods used to determine the premium required by an insurer to guarantee the benefits, if the insurance proposal establishing the premium provides, in particular,

(1) that the member will be entitled to a pension at a given age and that, if he is receiving a pension at the time of his death, his spouse will be entitled to the pension provided for under this Act;

(2) that the member will be entitled to transfer to another pension plan referred to in section 97 the value of his pension benefits with accrued interest calculated at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada, that right being exercisable, provided payment of the pension has not begun, every five years, within one hundred and eighty days after the date of expiry of every fifth year;

(3) that the spouse or the assigns of a member who died before receiving any pension payment will be entitled to the transfer of the amounts referred to in subparagraph 2 to another pension plan referred to in section 97;

(4) that the member will be entitled, at any time during the period determined under subparagraph 1 of the second paragraph of section 98, to avail himself of the proposal and to transfer the value of his pension benefits to the proposed pension plan.

62. Any benefit determined on the basis of the normal pension shall, where the pension is established with reference to the progression of the member's remuneration in the course of his period of employment, take into account the progression until the end of the member's period of continuous employment, except

(1) where the pension plan provides that the pension will cease to be established with reference to the progression of the member's

remuneration before the end of the member's period of continuous employment, provided that date is not prior to the date on which the member ceases to be an active member;

(2) where the pension plan is amended to provide that, in respect of service credited to the member from the effective date of the amendment, the pension shall cease to be established with reference to the progression of the member's remuneration.

63. In the case of an insured plan, or of an uninsured plan under which refunds or benefits are guaranteed by an insurer, coverage for service completed in the course of a fiscal year of the plan and credited under such plan shall be granted as the insurer receives contributions from the employer or from the pension committee.

Coverage for service credited in respect of any period prior to the current fiscal year of the plan shall be granted upon receipt of the total amount of the premium required by the insurer.

64. The designation of beneficiaries and the revocation thereof are governed by articles 2540 to 2555 of the Civil Code of Lower Canada, adapted as required.

65. With the exception of sections 63, 64, 67, 83, 84, 86 and 92, this chapter does not apply to additional voluntary contributions.

DIVISION II

REFUNDS

66. Every member is entitled to the refund of the member contributions paid by him, and the employer contributions paid in respect of a member may be refunded to the member, with accrued interest, except in the following cases:

(1) if the member is an active member;

(2) if the member is entitled to benefits, unless the pension plan provides that he may elect to receive a refund even if he became entitled to a deferred pension before meeting the requirements prescribed by this Act to be entitled to such pension. However, no refund resulting from such an election may be made after the member has met such requirements.

Notwithstanding the second paragraph of section 5, no plan may provide for the refund of contributions in contravention of this section.

67. Every member who ceases to be an active member is entitled to withdraw the value of additional voluntary contributions credited to his account, with accrued interest, except if the contributions have been used to purchase a pension or if they result from the conversion of member or employer contributions transferred under section 97 or 99.

The right to withdraw contributions may be exercised only within the one hundred and eighty days which follow the date on which the member ceased to be an active member and, subsequently, only every five years, within the one hundred and eighty days which follow the date of expiry of every fifth year.

DIVISION III

BENEFITS

§ 1.—*Deferred pension*

68. A deferred pension is a retirement pension, payment of which is deferred until normal retirement age.

A deferred pension shall have the same characteristics as the normal pension, except

(1) those relating to a postponed pension referred to in sections 76 to 80;

(2) the pension supplement provided by the pension plan for the payment of a minimum normal pension, which may, with the authorization of the Régie, not be counted for the purpose of determining the deferred pension.

69. Every member who ceases to be a member after completing two years or more of active membership is entitled to a deferred pension equal to or greater than the normal pension.

§ 2.—*Early retirement pension*

70. An early retirement pension is a retirement pension, payment of which begins before normal retirement age.

71. Every person who has been an active member for at least two years and whose period of continuous employment is terminated within ten years of the date on which he will attain normal retirement age is entitled to an early retirement pension.

However, a member who, before terminating continuous employment, becomes entitled to a deferred pension in respect of service completed with a former employer may receive early payment of the deferred pension if his entitlement to a deferred pension has not been transferred to the plan to which his employer is a party and if he applies therefor within ten years of attaining the normal retirement age set under the plan giving him entitlement to the deferred pension.

72. The value of the early retirement pension shall be equal to or greater than the value of the normal pension, discounted on the date on which payment of the early retirement pension begins.

§ 3.—*Normal pension*

73. A normal pension is a retirement pension, payment of which begins at normal retirement age.

Normal retirement age shall not be later than the day on which the member attains sixty-five years of age.

74. Unless section 76 prescribes the postponement of the normal pension, every active member is entitled to the normal pension on attaining normal retirement age.

§ 4.—*Postponed pension*

75. A postponed pension is a retirement pension, payment of which begins after normal retirement age.

76. The normal pension of a member shall be postponed if, after normal retirement age, he remains employed by the employer by whom he was employed at normal retirement age.

77. Every member is entitled, on application, to the payment of all or part of his normal pension during the postponement period but only to the extent necessary to offset any permanent reduction in remuneration that occurred during such period.

However, unless otherwise stipulated in the pension plan, the member may, following an agreement with his employer, receive all or part of his pension, regardless of the limit set by the first paragraph.

No member may exercise this right more than once per twelve-month period, except pursuant to an agreement with the pension committee.

78. If contributions are paid during the postponement period, the resulting additional amount of pension shall be of a value equal to or greater than that of the benefits that could be purchased, at the end of the postponement period, with the member contributions paid during such period, including accrued interest.

79. Where all or part of a normal pension is postponed, the amount of pension not paid during the postponement period shall be adjusted at the end of the postponement.

The pension plan shall prescribe the adjustment formula.

80. Postponement of the normal pension ends

(1) upon termination of the member's period of continuous employment with the employer by whom he was employed at normal retirement age;

(2) when, by reason of the postponement, the plan no longer qualifies as a registered retirement plan as defined in section 1 of the Taxation Act.

81. Where a normal pension is postponed under this Act or where a pension plan allows a member who is entitled to a pension that has become payable to replace all or part of it, if he decides to postpone it until after normal retirement age, by an adjusted pension, the adjustment shall be made so as to ensure that the pension payable at the end of the postponement is actuarially equivalent to the pension the payment of which would have begun at normal retirement age, had the pension not been postponed.

The actuarially equivalent pension shall be determined on the basis of actuarial assumptions identical to those which were transmitted to the Régie and which, at the date the member attained normal retirement age, were used to determine the value of the benefits to which section 60 applies and to which the member is entitled on that date.

§ 5.—*Disability pension*

82. The value of the pension granted under the pension plan to a member who has become disabled and who, for that reason, had to terminate his employment with an employer who is a party to the plan or cease to be an active member, shall be equal to or greater than the value of the benefits to which the member would have been entitled had he not become disabled, discounted on the date payment of the pension begins.

§ 6.—*Additional pension*

83. Except in the case of a defined contribution plan, every member whose member contributions, with accrued interest, exceed the limit set by section 60, or who is credited with voluntary additional contributions, is entitled, from the date on which a pension begins to be paid to him under the pension plan, to purchase an additional pension with such excess amount or contributions and accrued interest.

The plan may, however, allow the member to choose between the additional pension purchased with his additional voluntary contributions and any other benefits of equal value determined by the plan.

84. The additional pension shall be determined according to actuarial assumptions and methods identical to those which were transmitted to the Régie and which, at the date of determination of the pension, are used to determine the value of other benefits to which section 60 applies and which are vested on that date.

In addition, the additional pension shall have the same characteristics as the normal pension except the pension supplement provided by the pension plan for the payment of a minimum normal pension.

§ 7.—*Survivor benefits*

85. For the purposes of this subdivision, the spouse of a member is the person who, on the day of reference defined in the second paragraph,

(1) is married to the member;

(2) has been living in a conjugal relationship with an unmarried member for a period of not less than three years, or for a period of not less than one year if

– at least one child is born, or to be born, of their union;

– they have adopted, jointly, at least one child while living together in a conjugal relationship; or

– one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

Spousal status is established as of the day payment of the pension of the member begins or as of the day preceding the death of the

member, according as the first or the second option is provided in the pension plan, or if none, as of the first of such events.

86. Where a member dies before receiving any refund or benefit, his spouse or, if the member does not have a spouse, his assigns shall be entitled to receive a lump sum payment equal to or greater than

(1) the value of any pension to which the member was entitled before his death;

(2) if the member was not entitled to a pension before his death, the value of the deferred pension to which he would have been entitled had he ceased to be an active member on the day of his death, for a reason other than his death;

(3) if the member was not entitled to a pension before his death or if, under the circumstances described in subparagraph 2, he would not have been entitled to a pension, to the member contributions and additional voluntary contributions paid by the member, with accrued interest.

Any voluntary additional contribution credited to the account of the member and any member contribution paid in excess of the limit set by section 60, with accrued interest, shall be added to the values referred to in subparagraphs 1 and 2 of the first paragraph. The values shall, in addition, be established without reference to the assumptions as to survival or mortality for the period prior to the first payment of the pension.

This section does not apply if the member's surviving spouse is, from the death of the member, entitled to a pension the value of which is equal to or greater than the value of the benefit provided in the said section.

87. The spouse of a member is entitled to a pension from the death of the member if, before his death, the member was receiving a pension under this division or under subparagraph 1 or 2 of the first paragraph of section 92. The spouse may, before the date on which payment of the member's pension begins, waive such entitlement or revoke such a waiver, provided the pension committee is notified thereof in writing before that date.

The amount of the spouse's pension shall be equal to or greater than 60 per cent of the amount of the member's pension.

The sum of the pension provided for the spouse and the member's pension, reduced accordingly, shall, on the date payment of the

pension begins, be at least actuarially equivalent to the pension the member would have received had it not been for the benefit granted to the spouse by this section.

88. Where a member whose pension was postponed in whole or in part dies during the postponement period, his spouse shall, unless he has waived such entitlement, be entitled to a pension the value of which shall be equal to or greater than the higher of

(1) the value of the pension he would have been entitled to receive pursuant to section 87 if payment of the postponed pension had begun on the day preceding the death of the member; and

(2) the value of the death benefit he would have been entitled to receive as the beneficiary pursuant to section 86 and under the postponed pension.

89. Payment of a pension to a spouse shall not cease by reason of the fact that he has remarried or is living in a conjugal relationship with another person.

DIVISION IV

OPTIONS

90. Every member or beneficiary who has become entitled to a pension part of which exceeds the maximum benefits payable under the terms of a registered retirement plan defined in section 1 of the Taxation Act may elect to require that the value of the excess be refunded to him.

91. Every member or spouse who has become entitled to a pension under a pension plan is entitled, in the cases and on the conditions prescribed by regulation, to replace that pension by another life pension the amount of which may vary annually, and established on the basis of methods, assumptions, rules or factors prescribed by regulation.

92. The pension plan may permit a member or the spouse of a member who has become entitled to a pension to elect, before payment of the pension begins, to replace all or part of the pension

(1) by a pension the amount of which is adjusted to take into account an amount equal to the benefits determined under the Old Age Security Act, the Act respecting the Québec Pension Plan or a similar plan within the meaning of paragraph *u* of section 1 of the latter Act;

(2) by a pension the amount of which is adjusted periodically according to an index or at a rate provided in the plan;

(3) by a pension the amount of which is adjusted by reason of provisions relating to the payment of benefits payable after the death of the member or his spouse, or by reason of amendments to such provisions; unless the spouse consents thereto, the spouse's pension which results from this election shall not be less than the pension to which he would have been entitled under section 87;

(4) by a single payment or a series of payments in the event of a physical or mental disability that reduces life expectancy;

(5) if the value of the pension is less than 4 per cent of the Maximum Pensionable Earnings established under the Act respecting the Québec Pension Plan in respect of the year in which he became entitled to the pension, by a lump sum payment;

(6) by other benefits prescribed by regulation.

The replacement value shall be equal to or greater than the value of the replaced pension, discounted at the time of replacement.

No option other than those mentioned in the first paragraph may be permitted by the plan.

DIVISION V

INTEGRATION

93. Where a pension plan provides that, for the purpose of determining the normal pension, all or part of the benefits payable under the public plan established by the Act respecting the Québec Pension Plan or the Canada Pension Plan will serve to reduce the member's pension benefits, the reduction shall not be greater than the amount *m* calculated according to the following formula:

$$r \times \frac{a}{35} = m$$

where

“*r*” represents all or part of the benefit payable under the public plan;

“*a*” represents the number of years of service credited under the pension plan.

The fraction $\frac{a}{35}$ shall not be greater than 1.

Only the retirement benefit payable under the public plan may serve for such a reduction.

94. The amount of the benefit payable under a public plan that is required to be deducted under a pension plan shall, if necessary, be established on the basis of an estimation from the time the member becomes entitled to a pension under the plan.

If, under the plan, the deferred pension is determined with reference, to the remuneration paid to the member after he became entitled to a deferred pension, the amount shall be established at a date not subsequent to the date of the last remuneration included in the calculation.

Moreover, where the amount is an estimation, it shall be based on data that are compatible with those used for the determination of the benefits paid under the public plan at the date of estimation.

95. In no case may benefits derived from an amendment to a public plan referred to in section 93 be taken into account for the determination of a benefit accrued under the pension plan if that results in a reduction of the benefits of the member, except

(1) where the member applies therefor, provided the resulting benefit is of an equal or greater value;

(2) where the pension plan is amended to take into account the new benefits derived from the public plan, provided only the benefits accrued in respect of service credited after the amendment are reduced;

(3) where the benefit accrued under the pension plan is not determined on the basis of the normal pension, or where the value of the benefit exceeds the value of the deferred pension, provided the plan is amended to provide for the reduction of the benefit or of the excess value and only the benefits payment of which begins after the amendment are affected by the reduction.

96. The normal pension determined with reference to a benefit payable under the terms of a public plan referred to in section 93 shall not be reduced again to take into account an amendment to the public plan or an increase of the benefit.

The same rule applies in respect of any other benefit determined with reference to the benefit payable under the terms of a social security program established by law.

CHAPTER VII

TRANSFERS OF PENSION BENEFITS AND ASSETS

97. Every plan member is entitled, subject to the conditions and time limits set out in this chapter, to transfer to such pension plan as he indicates

(1) the member contributions paid by him into the plan, if he is not entitled to the payment of a pension benefit, and the additional voluntary contributions credited to his account, with accrued interest;

(2) the amount corresponding to the value of any benefit, including a benefit guaranteed by an insurer, to which the member is entitled but of which payment has not begun. Such value must be equal to or greater than,

(a) where the transfer is applied for within the time limit set out in subparagraph 1 of the second paragraph of section 98, the value of the member's benefit determined pursuant to section 61;

(b) where the transfer is applied for within the time limit set out in subparagraph 2 or 3 of the second paragraph of section 98, the value of the member's benefit determined with reference to related benefits and according to actuarial assumptions and methods identical to those which were transmitted to the Régie and which are used, on the day the transfer is applied for, to determine the value of other benefits to which section 60 applies and which are vested on that date;

(3) the member contributions which exceed the limit set by section 60, with accrued interest;

(4) the amounts previously transferred, with accrued interest, or the amount corresponding to the value of the pension purchased with the transferred amounts. That value shall be determined according to actuarial assumptions and methods identical to those which were transmitted to the Régie and which are used, on the date the transfer is applied for, to determine the value of other benefits to which section 60 applies and which are vested on that date.

Interest calculated, until the date of transfer, at the rate used to determine the benefit to which the member is entitled or, where such values have been determined on the basis of an insurance proposal, at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada, shall be added to the values referred to in paragraphs *a* and *b* of subparagraph 2 and in subparagraph 4 of the first paragraph.

For the purposes of this section, the expression "pension plan" includes, in addition to the pension plans governed by this Act, any pension plan or annuity contract prescribed by regulation.

98. The right to a transfer under section 97 may be exercised only by a member who is at least ten years under the normal retirement age set by the plan. Such a right shall not be exercised where the member who, if he terminated his period of continuous employment, would be entitled to an early retirement pension that would be equal to or greater than the normal pension, is prohibited under the plan from transferring his benefits to another pension plan.

Moreover, this right may be exercised only within one of the following time limits:

(1) within one hundred and eighty days from the date on which a member ceased to be an active member;

(2) subsequently and not later than the date provided for in paragraph 3, every five years, within one hundred and eighty days from the date of expiry of every fifth year;

(3) within one hundred and eighty days from the date on which a member who ceased to be an active member attains an age which is ten years under normal retirement age.

The age restriction in respect of the member and the prohibition referred to in the first paragraph, and the time limit fixed in subparagraph 3 of the second paragraph do not apply to the transfer of amounts from a defined contribution plan or to the transfer of contributions paid under terms in a defined benefit plan that are identical to those of a defined contribution plan.

99. Every amount that a member is entitled to transfer may, if it is less than 10 per cent of the Maximum Pensionable Earnings established under the Act respecting the Québec Pension Plan for the year in which he becomes entitled thereto, be transferred by the pension committee to a pension plan referred to in section 97 and chosen by the member or, if not, by the committee.

The pension committee shall not, however, transfer any such amount if it has been used to purchase a pension the payment of which has begun.

100. The conditions set out in sections 137 to 141 for the payment of the benefits of members and beneficiaries apply to the payment of transferred amounts.

101. Except in the case of options provided for in sections 90 to 92 or of amounts referred to in subparagraph 1 of the first paragraph of section 97, no amount transferred shall be paid to the member otherwise than in the form of a life pension.

Moreover, payment of the life pension shall not commence prior to the member's full or partial retirement unless the member has become disabled.

102. Unless the pension plan sets a higher rate of interest, any amount transferred bears interest, from the date of the transfer and until a pension is purchased with such amount, at the rate prescribed by section 44 or 45 if the amount is transferred to a pension plan governed by this Act.

103. Every member is entitled, from the day he retires, to purchase a pension with any amount referred to in subparagraph 1 of the first paragraph of section 97 that has been transferred.

104. The amount of the pension paid under a pension plan governed by this Act and purchased with transferred amounts shall be determined according to actuarial assumptions and methods identical to those which were transmitted to the Régie and which, at the date of determination of the pension, are used to determine the value of other benefits to which section 60 applies and which are vested on that date.

The pension shall have the same characteristics as the normal pension, except the pension supplement provided by the plan for the payment of a minimum normal pension.

105. Where the transfer is made at the request of a member who availed himself of a general agreement prescribing the conditions of transfer, between pension plans, of benefits or assets in respect of a given group of members, the benefits attributed to the member following the transfer shall be equal to or greater than the benefits which, determined according to actuarial assumptions and methods identical to those which were transmitted to the Régie and which, at the date of the transfer, are used to determine the value of other

benefits to which section 60 applies and which are vested on that date, would have resulted from the transfer to a plan not governed by this Act of the assets related to the benefits that the member had accumulated before the transfer.

A copy of every general agreement referred to in the first paragraph shall be transmitted to the Régie within thirty days after the day it is entered into.

CHAPTER VIII

INFORMATION TO MEMBERS

106. The pension committee shall provide to each member or employee eligible for membership a written summary of the pension plan, together with a brief description of the member's rights and obligations under the plan and this Act. In the case of an amendment to the plan, such documents shall be provided to the members only and may consist only of the amended terms together with a brief description of the rights and obligations arising from the amendment.

The documents shall be provided within ninety days following

- (1) the date on which the employee becomes eligible for membership under the plan or becomes a member; or
- (2) the date of registration of the pension plan or of the amendment.

In the case of an amendment to the plan that does not affect the members' benefits, the documents need only be provided along with the annual statement.

The employer shall transmit, in writing, to the pension committee such information concerning employees eligible for membership as is necessary for the purposes of this section.

107. The pension committee shall transmit to each member, along with the notice of meeting provided for in section 161, an annual statement setting out the information prescribed by regulation, with respect to, in particular,

- (1) the benefits accumulated by him during the last fiscal year ended, and from the date he became a member of the plan to the end of that year;
- (2) the financial position of the pension plan.

108. Within sixty days after the date on which the pension committee is informed that a member has ceased to be an active member, it shall provide to the member, or to any other person entitled to a refund or benefit, a statement setting out the information prescribed by regulation and specifying, as of the date of the event giving entitlement thereto, the amount of the refund or the nature and value of the benefit, and the nature of and the requirements for entitlement to other benefits provided under the plan. If the pension committee has determined the value of the member's benefits on the basis of an insurance proposal as permitted by the second paragraph of section 61, it shall accompany the statement with a notice informing the member that the insurance proposal may be examined at the office of the pension committee within one hundred and eighty days after the date he ceases to be an active member.

In addition, within sixty days of a written request therefor, the pension committee shall, without charge, provide the member with the afore-mentioned statement, updated on the basis of the most recent data available; the updating shall include a new determination of the value of the member's benefits only where the member may exercise the right of transfer provided for in section 97.

Moreover, within thirty days of a written request therefor, the pension committee shall, without charge, provide the member with the data used to prepare the statement or to update it, in particular the data used to calculate the benefits to which he is entitled.

109. Within thirty days of a written request therefor, the pension committee shall permit an employee eligible for membership or a member or beneficiary to examine, without charge, during usual working hours, the text of the pension plan or any other document prescribed by regulation. The pension committee shall, subject to the same conditions, permit a member or beneficiary to examine the terms of the plan as they stood on any date included in the period during which the employee concerned was an active member.

The examination shall take place at the place where the plan is administered; however, where the employer has one or several establishments located within 150 km of an active member's place of employment, the member may examine the terms of the plan at that establishment or, where the employer has more than one establishment, at the establishment designated by the pension committee.

Where a copy of a document for which an examination request was made is sent without charge, within thirty days of the request,

to the person who made the request, the pension committee is dispensed from the obligation to permit examination of the document.

110. The pension committee is not required to provide documents without charge to any one person more than once within a period of twelve months.

The same applies in respect of requests for the examination of documents.

CHAPTER IX

FUNDING AND SOLVENCY

DIVISION I

GENERAL PROVISIONS

111. This chapter does not apply to insured pension plans.

Moreover, this chapter does not apply to defined contribution pension plans in which the employer's financial obligations are limited to the share of the current service contribution, with interest, if any, that he is required to pay as service is credited to the members under the plan.

112. For the purposes of this chapter, a defined benefit-defined contribution plan shall be considered to be a defined benefit plan.

113. Every pension plan shall be the subject of an actuarial valuation

(1) at the date on which it becomes effective;

(2) at the date on which an amendment to the plan having an impact on funding or solvency becomes effective;

(3) not later than at the date of the end of the last fiscal year of the plan occurring within three years after the date of the last actuarial valuation of the entire plan;

(4) whenever so required by the Régie, at the date fixed by the Régie.

114. The pension committee shall cause a report of every actuarial valuation of the pension plan to be prepared by an actuary. The report shall contain, in addition to the information prescribed by regulation, a declaration by the actuary attesting, in particular, that

the plan is in conformity with the funding and solvency standards prescribed by this Act.

Unless the Régie grants an extension, the pension committee shall transmit the report to the Régie within six months after the end of the fiscal year of the plan or after the date fixed by the Régie, according as the report pertains to an actuarial valuation required under paragraph 3 or paragraph 4 of section 113.

DIVISION II

FUNDING

§ 1.—*Funding requirements*

115. A plan is funded if, at the date of the actuarial valuation, the value of its assets is equal to or greater than the value at that date of the obligations arising from the plan in respect of service credited to the members.

116. Every pension plan must be fully funded at the date of each actuarial valuation.

A plan may, however, be partially funded at that date, provided the amount to be funded to ensure that the plan is fully funded constitutes an unfunded actuarial liability within the meaning of this Act or an amount determined pursuant to subparagraph 4 of the second paragraph of section 132.

117. The funding method used for an actuarial valuation shall be consistent with generally accepted actuarial principles and shall assume perpetual existence of the pension plan.

The actuarial assumptions and methods used in verifying the funding of a plan shall be appropriate, in particular, for the type of plan concerned and in view of its obligations and the position of the pension fund.

118. In addition to the other elements prescribed by regulation, an actuarial valuation shall determine

(1) the current service contribution, expressed in currency or as a rate or percentage of the remuneration of active members estimated in the valuation, for each fiscal year of the pension plan between the date of that valuation and the date of the next actuarial valuation required under paragraph 3 of section 113;

(2) the value of the assets of the pension plan and of the obligations arising from the plan in respect of service credited to the members to the date of valuation.

119. The current service contribution must be equal to or greater than the value of the obligations arising from the pension plan in respect of credited service completed during each of the years referred to in paragraph 1 of section 118. Such contribution may, however, be less if it is determined on the basis of a funding method which maintains the plan fully or partially funded at all times.

120. The value of the obligation referred to in section 118 or 119, which, under the plan, are to increase according, in particular, to the progression of the members' remuneration, shall include the estimated amount of the obligations when they become payable, assuming contingencies based on actuarial assumptions as to survival, morbidity, mortality, employee turnover, eligibility for benefits or other factors occur.

Furthermore, any benefit increase provided for by the plan which becomes effective after the benefits begin to be paid shall be taken into account in determining the value of the plan's obligations.

§ 2.—*Unfunded actuarial liabilities*

121. Unfunded actuarial liabilities include, for the purposes of this Act,

(1) the initial unfunded actuarial liability, representing the amount to be funded to ensure that the plan is fully funded at the date on which it becomes effective;

(2) the improvement unfunded actuarial liability, representing the amount to be funded as a result of an amendment to the plan which, when added to the balances of the other unfunded liabilities and the amount determined pursuant to subparagraph 4 of the second paragraph of section 132, would ensure that the plan is fully funded at the date on which the amendment becomes effective;

(3) a technical actuarial deficiency representing the amount to be funded to ensure that the plan is fully funded, and that is neither the balance of an initial or improvement actuarial unfunded liability, nor an unpaid contribution, nor the balance of an amount determined pursuant to subparagraph 4 of the second paragraph of section 132 or of a technical actuarial deficiency, determined by a previous actuarial valuation.

122. An improvement unfunded actuarial liability may be considered to be an initial unfunded actuarial liability if the amendment from which it arises provides only for the crediting of service in respect of a period prior to the effective date of the plan.

123. Every report relating to an actuarial valuation shall identify each unfunded actuarial liability and indicate how it is to be amortized, except in the case of a technical actuarial deficiency, if the method used for the valuation makes no reference to such a deficiency.

124. Every unfunded actuarial liability shall be amortized by dividing it into as many amounts as there are fiscal years or parts of a fiscal year of the pension plan included in the amortization period.

The amortization amounts shall, for each unfunded actuarial liability to which they apply, be clearly identified in the actuarial valuation.

The amortization period for any unfunded actuarial liability shall not exceed fifteen years and shall run from the date of determination of the unfunded liability.

125. An improvement unfunded actuarial liability may be determined without performing an actuarial valuation of the whole plan.

In that case, the unfunded liability shall be equal to the value of the additional obligations arising from an amendment to the plan; such value shall be determined on the basis of the same assumptions and methods as those used for the preceding actuarial valuation.

The period of amortization of such an unfunded liability shall not exceed five years, unless an actuary certifies that the plan is solvent or partially solvent.

126. The amortization amounts shall, for each fiscal year or part of a fiscal year of the pension plan included in the amortization period, be established according to either a flat percentage of the estimated remuneration of the members who, on the date of determination of the unfunded actuarial liability, are active members or a flat amount.

The annual rate of increase of such remuneration shall not exceed

(1) the rate of increase of the remuneration used for the purposes of the actuarial valuation where the valuation requires the use of such rate in view of the type of plan concerned;

(2) a rate compatible with the interest and inflation rates used for the purposes of the actuarial valuation where the valuation does not, in view of the type of plan concerned, require the use of a rate of increase of the remuneration.

127. The amortization amounts to be paid for each fiscal year or part of a fiscal year of the pension plan included in the amortization period shall be fixed at the date on which the unfunded actuarial liability is determined.

Amortization amounts shall not be reduced in the course of the amortization period, except in the cases provided for in section 128, 129 or 135.

128. Amortization amounts paid during a fiscal year of the pension plan may exceed the amounts fixed at the date on which the unfunded actuarial liability is determined, provided the excess amount is used to reduce, in the following order, the amounts remaining to be paid in connection with:

(1) any amount determined pursuant to subparagraph 3 or 4 of the second paragraph of section 132;

(2) any technical actuarial deficiency;

(3) any initial unfunded actuarial liability;

(4) any improvement unfunded actuarial liability.

Where there are several unfunded liabilities of the same nature, the reduction shall operate from the earliest to the most recent.

129. Where, at the date of an actuarial valuation, the amortization amounts to be paid exceed the amount to be funded to ensure that the plan is fully funded at that date, the amortization amounts to be paid in connection with one or several unfunded actuarial liabilities may be reduced, proportionately and in the order provided in subparagraphs 2 to 4 of the first paragraph and in the second paragraph of section 128, by such excess amount, which may, in no case, be used for any other purpose.

130. In a defined benefit-defined contribution pension plan, where, by reason of variances between the estimated data and the actual data, in particular, as to the number of active members or of hours of employment, the amounts actually paid to amortize an unfunded actuarial liability are less than the amortization amounts fixed at the time of determination of the unfunded liability, the pension

committee shall transmit to the Régie the corrective measures proposed by the actuary for the purpose of amortizing the unfunded liability within the period initially fixed.

DIVISION III

SOLVENCY

131. A pension plan is solvent if its assets are equal to or greater than its liabilities.

132. Every pension plan must be solvent at the date of each actuarial valuation.

A plan may, however, be partly solvent provided the amount to be funded to ensure the solvency of the plan is offset by the value, at the date of the actuarial valuation, of

(1) the amounts required to amortize any initial unfunded actuarial liability;

(2) the amounts required to amortize any other unfunded liability over a period of five years after that date;

(3) the remaining amounts required to amortize an amount determined pursuant to subparagraph 4 at the time of a previous actuarial valuation;

(4) the difference between the assets, plus the amounts referred to in subparagraphs 1 to 3, and the liabilities.

The interest rate used to determine the value of the amounts referred to in the second paragraph shall be identical to the rate used to determine the liabilities of the plan for the purpose of determining the plan's solvency.

133. For the purpose of determining the solvency of a pension plan at the date of the actuarial valuation, the assets of the plan shall be determined according to their market value at that date or, if such value is not determinable, according to the liquidation value or an estimate thereof.

The liabilities of the pension plan shall be equal to the value of the obligations arising from the plan, assuming that the plan is totally terminated on that date.

The method used to value the assets and liabilities shall provide for the stabilization of short-term fluctuations in the value used to

determine the assets or in the interest rate used to determine the liabilities.

134. The liabilities of a pension plan under which benefits are guaranteed by an insurer shall, for the purpose of determining the plan's solvency, include the value corresponding to those benefits, and the plan's assets shall include an amount equal to such value.

135. Any amount determined pursuant to subparagraph 4 of the second paragraph of section 132 shall be paid into the pension fund by the employer within five years after the date of the actuarial valuation.

The last paragraph of section 39, sections 41 and 123, the first and second paragraphs of section 124 and section 127, adapted as required, apply to the determination or payment, as the case may be, of such amount. Unless the pension plan sets a higher interest rate, any amount so determined and not paid into the pension fund bears interest, from the date of default, at the rate prescribed by section 44 or 45.

Such amount may be used to reduce proportionately and in accordance with section 128 the amortization amounts which, five years after the date of the actuarial valuation, remain to be paid in respect of any technical actuarial deficiency or improvement unfunded actuarial liability.

136. The degree of solvency of a pension plan is the proportion, expressed as a percentage, that the value of the assets of the plan is of the value of its liabilities.

DIVISION IV

CONDITIONS GOVERNING THE PAYMENT OF BENEFITS

137. The value of any benefit to which a member or beneficiary becomes entitled under a pension plan having a degree of solvency of less than 100 per cent as established in the last actuarial valuation may be paid out of the pension fund only in proportion to the degree of solvency of the plan as established in such valuation.

This section shall not be construed to prevent the periodic payment of any pension that has become payable.

138. The actuary responsible for preparing the report relating to an actuarial valuation of the pension plan shall determine in his

report whether the payment of the benefits that are transferable under an agreement referred to in section 105 may, as a consequence, reduce the degree of solvency of the plan or, where that degree exceeds 100 per cent, reduce it to a percentage lower than 100 per cent.

In that case, the payment of benefits is permitted only in the proportion fixed by the actuary to avoid such consequence.

139. The value of the benefits which, pursuant to section 137 or 138, cannot be paid may be paid up to 5 per cent of the Maximum Pensionable Earnings established under the Act respecting the Québec Pension Plan for the year during which the payment is to be made; the total amounts so paid since the last actuarial valuation to ascertain the solvency of the pension plan shall not, however, exceed 5 per cent of the assets determined at the time of the actuarial valuation.

140. Notwithstanding the limits set under sections 137 to 139, the value of the benefits paid shall be equal to or greater than the aggregate of the contributions paid by the member concerned and the amounts credited to his account following a transfer under section 97 or 99, with accrued interest.

141. The balance of the value of the benefits which, under the terms of sections 137 to 140, cannot be paid must be funded and paid within five years after the date of the initial payment or not later than on the date the member concerned attains normal retirement age if he attains that age before the expiry of the five-year period.

CHAPTER X

ADMINISTRATION OF A PENSION PLAN

DIVISION I

ADMINISTRATION

142. Every pension plan shall, from its registration, be administered by a pension committee composed of at least

(1) two plan members designated on the conditions and within the time limits set out in the plan or, if so decided by the plan members at the meeting held pursuant to section 161,

– one member designated by the active members and one member designated by the non-active members; or

– one member designated by either group of plan members and one member designated on the conditions and within the time limits set out in the plan;

(2) one member designated on the conditions and within the time limits set out in the plan who is neither a party to the plan nor a third person to whom a prohibition as to the granting of loans under section 171 applies.

143. The term of office of a member of a pension committee shall not exceed three years.

A member of the committee, whose term of office has expired, shall remain in office until he is reappointed or replaced.

144. Until its registration, a pension plan which is effective and for which a pension committee has yet to be formed shall be administered by the employer.

The employer shall, for the administration of the pension plan, have the powers, obligations and liability of a pension committee.

145. Except in the case of an insured plan, the pension committee shall act in the capacity of a trustee.

146. The pension committee shall exercise the prudence, diligence and skill that a reasonable person would exercise in similar circumstances; it must also act with honesty and loyalty in the best interest of the members or beneficiaries.

The members of the pension committee shall use in the administration of the pension plan all relevant knowledge or skill that they possess or, by reason of their profession or business, ought to possess.

147. Subject to such limitations or prohibitions as may be set out in the pension plan, the pension committee may delegate all or part of its powers or be represented by a third person for a specific act.

To such extent as is permitted by the instrument of delegation, the person or body to whom or which the pension committee has delegated powers may subdelegate all or part of such powers.

148. The person or body exercising delegated powers shall assume the same obligations and incur the same liability as those the

pension committee or one of its members would have had to assume or have incurred if the powers had been exercised by the pension committee.

149. The pension committee shall not be liable for any act or omission of the person or body to whom or which it has delegated powers unless

(1) it knew or should have known that he or it did not possess the required skill;

(2) it was not empowered to make a valid delegation of such powers;

(3) it consented to, or ratified, such acts or omissions.

150. The pension committee shall, within thirty days after the date on which the member designated by the plan members takes office, reexamine the delegations of powers to determine those that are to be maintained and those that are to be revoked.

The revocation of a delegation carries with it the revocation of every subdelegation made by the delegatee, if any.

151. Every member of the pension committee is deemed to have approved any decision made by the other members. He shall be solidarily liable therefor with the other members unless he expresses his dissent without delay.

He is also deemed to have approved any decision made in his absence unless he makes his dissent known to the other members, in writing, within a reasonable time after becoming aware of the decision.

152. Except in the case of a hypothecary loan which shall not exceed the value of the hypothecated immovable after deducting other outstanding hypothecary loans encumbering the immovable, if any, the pension committee shall not borrow except for the payment of refunds, benefits or administration costs of the pension plan. The total outstanding borrowings, excluding hypothecary loans, shall not exceed, in a fiscal year of the plan, twice the amount of the current service contribution.

The assets of the plan shall not be used to secure a loan other than a hypothecary loan.

153. No member of a pension committee may exercise his powers in his own interest or in the interest of a third person nor may he place himself in a situation of conflict between his personal interest and the duties of his office.

If the committee member is himself a member or a beneficiary of the plan, he shall exercise his powers in the common interest, considering his own interest to be the same as that of the other members or beneficiaries of the plan.

154. Every member of a pension committee shall, without delay, notify the committee in writing of any interest he has in an enterprise that is susceptible of causing his personal interest to conflict with the duties of his office, and of any rights, other than those arising from the plan, he may have in or may invoke against the pension fund, specifying, where such is the case, the nature and value of the rights.

The pension committee shall keep at its office a register in which every interest or right notified to it pursuant to the first paragraph shall be recorded. Any interested person may examine the register without charge during usual working hours, and the limit set out in section 110 does not apply to such an examination.

155. Unless otherwise stipulated, the fiscal year of a pension plan ends on 31 December each year; the fiscal year shall not exceed or include less than twelve months except if authorized by the Régie.

156. The pension committee shall, within six months after the end of each fiscal year of the pension plan, transmit to the Régie an annual statement containing the information prescribed by regulation.

It shall cause to be prepared, within the same time limit, a financial report containing a statement of the plan's assets and a statement of revenues and expenditures for the fiscal year just ended. The report must be audited by an accountant to the extent prescribed by regulation.

157. Unless otherwise stipulated, the members of the pension committee are not entitled to any remuneration and the administration costs shall be borne by the pension fund.

158. Every refund or payment of benefits made by the pension committee shall constitute a full discharge where the committee has grounds to believe, on the basis of the information at its disposal, that the persons to whom they are made are the persons who are entitled

thereto and the refunds or payments are, in other respects, in conformity with the law and the terms of the plan.

Such discharge is valid only with respect to the sums actually paid, or the value thereof.

159. Where several persons claim the same benefit under a pension plan, the pension committee may be fully discharged by depositing the amount due with the General Deposit Office of Québec or with a trust company which is, in that case, required to fulfil the obligations prescribed by the second paragraph of article 189.1 of the Code of Civil Procedure, which applies adapted as required.

160. The pension committee shall transmit to the Régie the name and last-known address of every untraceable member or beneficiary who is entitled to a refund or to the payment of benefits or other amounts due to him following the total or partial termination of a pension plan.

If the Régie is able, with the information at its disposal, to locate the member or beneficiary, it shall notify him to communicate with the pension committee at the address indicated.

161. Within six months after the end of each fiscal year of the plan, the pension committee shall, by a written notice, call each member and the employer to a meeting held to

- inform them of the amendments made to the plan, the indications recorded in the register kept under section 154 and the financial position of the plan;

- enable each group of active members and non-active members, to decide whether or not it will designate a member to the pension committee and, if it so decides, to proceed with the designation either in such manner as may be proposed by the committee, or, if none is proposed or if the group refuses the manner proposed, in the manner, decided by the group, which allows to proceed with the designation at that meeting. Any decision relating to a matter mentioned above shall be made by a majority of the votes cast by the members of each group.

The pension committee shall, in addition, render an account of its administration at that meeting.

162. If a member of the pension committee designated by the plan members pursuant to section 161 becomes unable to act or if a

seat on the committee is vacant, the pension committee shall designate a plan member to replace the member until the next meeting held pursuant to the said section.

DIVISION II

INVESTMENTS

163. Only the pension committee, the person or body to whom or which that power has been delegated or, if the pension plan so provides, the members of the plan may decide how the assets of the plan are to be invested.

Investments shall be made according to law and investments selected by the pension committee or the delegatee shall, in addition, be made in conformity with the investment policy.

164. The pension committee shall establish and adopt a written investment policy, giving particular consideration to the type of pension plan, its characteristics and its financial obligations.

165. Unless the Régie authorizes, on the conditions it fixes, that the investment policy be simplified, the policy must set out

- (1) the expected rate of return;
- (2) the degree of risk involved in the investment portfolio, particularly as regards price fluctuations;
- (3) liquidity requirements;
- (4) the proportion of assets that may be invested in debt securities and equity securities, respectively;
- (5) the permitted categories and sub-categories of investments;
- (6) investment portfolio diversification measures conducive to an overall reduction of the degree of risk;
- (7) rules and a time schedule applicable to the valuation of the investment portfolio and to the monitoring of the management of the investment portfolio and those applicable to the review of the investment policy.

Unless they are already set out in the plan, the policy must also include

(1) rules regarding the solvency of borrowers and the security required for granting loans out of the assets, in particular the lending of securities and hypothecary loans;

(2) rules applicable to the exercise of the voting rights attached to the securities forming part of the assets;

(3) the basis for the valuation of investments that are not traded on an organized market;

(4) rules applicable to the use of futures contracts, options, share purchase warrants or share rights or other financial instruments;

(5) rules regarding the loans that may be raised by the pension committee.

166. All deposits and investments of the assets of the pension fund must be made in the name of the pension fund or for its account.

167. In no case may a proportion of the assets of the pension plan greater than 10 per cent of their total book value be invested directly or indirectly

(1) in any one property;

(2) in one or more loans to any one natural person;

(3) in any form whatever, in any one legal person or in any one body or group of persons or properties without juridical personality, such as an association, a partnership or a trust.

Any group of closed companies within the meaning of the Securities Act (R.S.Q., chapter V-1.1), made up either of subsidiaries of the same parent company or of a parent company and its subsidiaries, constitutes one and the same group for the purposes of subparagraph 3 of the first paragraph.

168. The 10 per cent limit does not apply to the following forms of investment:

(1) securities issued or guaranteed by the Gouvernement du Québec, the Government of Canada or the government of a Canadian province;

(2) units of an unincorporated mutual fund or shares in a mutual fund provided that the investments made by the fund are in conformity with this Act and, where the fund is neither a fund governed by Titles II to VIII of the Securities Act nor a fund all the

securities of which are issued in the name of pension funds, provided that its operating rules are comparable to those prescribed under the Securities Act;

(3) deposits guaranteed, under the terms of a management contract, by an insurer authorized to carry on insurance business in Québec or elsewhere in Canada where an agreement under section 244 is applicable;

(4) deposits with a financial institution that are insured by the Régie de l'assurance-dépôts du Québec or any equivalent body in Canada, but only up to the insured amount.

169. Except in the case of securities traded on an organized market, the assets of the pension plan shall not be invested in securities issued by a legal person to whom a loan out of such assets is prohibited under sections 171 and 172.

170. The assets of a pension plan shall not be invested, directly or indirectly, in shares carrying more than 30 per cent of the voting rights attached to the shares of a legal person.

The 30 per cent limit does not apply to the shares of a legal person referred to in paragraph c.1, c.2 or c.3 of section 998 of the Taxation Act.

171. No loan out of the assets of the pension plan may be granted

(1) to a member of a pension committee, a delegatee or, where that member or delegatee is a legal person or group without juridical personality, to the directors, officers or employees of the legal person or group;

(2) to an employees' association representing members or to its directors, officers or employees;

(3) to the spouse or child of any person referred to in paragraph 1 or 2;

(4) where the employer is a legal person and administers all or part of the plan,

(a) to a shareholder, associate or member who holds directly or indirectly more than 10 per cent of the capital stock of the legal person or to his spouse or child;

(b) to a shareholder, associate or member or to his spouse or child if, together, they hold directly or indirectly more than 10 per cent of the capital stock of the legal person;

(5) where the employer administers all or part of the plan, to any legal person more than 10 per cent of the capital stock of which is directly or indirectly held by the employer;

(6) to a legal person, other than the employer, more than 10 per cent of the capital stock of which is held by a person referred to in paragraph 1, 2, 3 or 4;

(7) to a legal person, other than the employer, more than 50 per cent of the capital stock of which is held by a group composed exclusively of persons referred to in paragraph 1, 2 or 4, of the employer where he administers all or part of the plan, or of the spouse or child of any of them;

(8) to a legal person, other than the employer, controlled by a person referred to in paragraph 1, 2, 3 or 4, or by the employer where he administers all or part of the plan, or by a group composed exclusively of such persons.

172. Despite section 171, a loan secured in the manner prescribed by regulation may be granted

(1) to a member or to the spouse or child of a member;

(2) to the employer;

(3) to a parent company and a subsidiary provided that one of the companies is the employer and that the total loans granted to them do not exceed 10 per cent of the total book value of the assets of the pension plan.

173. For the purposes of sections 171 and 172, spouses are persons married to each other or persons who have been living in a conjugal relationship for a period of not less than three years, or for a period of not less than one year if

– at least one child is born, or to be born, of their union;

– they have adopted, jointly, at least one child while living in a conjugal relationship; or

– one of them has adopted at least one child who is the child of the other, while living in a conjugal relationship.

For the purposes of the same sections, a natural or legal person is deemed to hold the shares held, directly or indirectly, by a legal person controlled by such natural or legal person. A person who holds, directly or indirectly, otherwise than as security, securities entitling him to elect in all cases a majority of the directors of a legal person controls that legal person.

174. If, as a result of an unforeseen or uncontrollable event, the assets of the pension plan cease to be invested according to law, the pension committee shall, within a reasonable time after it has knowledge of the event, take every step necessary to regularize the situation.

175. Every person who makes an investment otherwise than according to law is, by that sole fact and without further proof of wrongdoing, liable for any resulting loss.

The members of a pension committee who approved such an investment are, by that sole fact and without further proof of wrongdoing, solidarily liable for any resulting loss.

However, such persons incur no liability under this section if they acted within his powers and on the recommendation of persons whose profession gives credence to their opinion.

176. Any investment made in contravention of the law may be annulled by judicial action on the application of the Régie or any interested person.

The court may order any person who is liable under section 175 to pay to the pension fund an amount equal to the resulting loss or to the sums so invested.

177. No fee, commission or other benefit in respect of any transaction relating to the investment of the assets of the pension plan may be paid or granted

(1) to the members of a pension committee, to a delegatee or to the spouse or children of any of them;

(2) to the employer, to the employer's employees responsible for the administration of all or part of the plan, or, where the employer is a legal person, to the directors or officers of the legal person;

(3) to the persons or groups referred to in section 171.

The first paragraph does not apply, however, to a person or group referred to therein if such benefit is ordinarily granted to him or it

in the performance of his or its duties and if it corresponds to what is usually granted in respect of such a transaction.

DIVISION III

PROVISIONAL ADMINISTRATION

178. The Régie may, for the period it fixes, assume the administration of all or part of a pension plan or entrust it to the person or body it designates in any of the following cases:

(1) where the Régie or the investigator it has designated is making an inquiry into the plan's conformity with the law or into its administration;

(2) where, in the opinion of the Régie, the plan or the administration thereof is not in conformity with this Act;

(3) where, in the opinion of the Régie, the pension committee, a member of that committee, a delegatee or, where the member or delegatee is a legal person or a group without juridical personality, any of its directors has committed a malversation, a breach of trust or other form of misconduct.

179. Before deciding to assume the provisional administration, the Régie shall give the pension committee and, where such is the case, the person or body whose administration or conduct is questioned an opportunity to submit their views. However, in cases of emergency, the Régie may make its decision before obtaining their views, provided it does so within fifteen days of the decision.

180. The Régie shall transmit its decision to the pension committee and, where such is the case, the person or body whose administration or conduct is questioned and to the employer. It shall also, where the decision contemplates the provisional administration of the whole pension plan, transmit it to the members or, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, to the employees' association representing the members.

181. The provisional administrator shall, to the extent set out in the decision of the Régie, exercise the powers of the pension committee; the committee, or the person or body to whom or which such powers have been delegated, becomes, to the same extent, disqualified from exercising such powers.

The provisional administrator shall have the same obligations and liability as the pension committee.

182. After having decided to assume the provisional administration on any of the grounds set out in subparagraph 2 or 3 of the first paragraph of section 178 and having given the person or body whose administration or conduct is questioned an opportunity to submit his or its views, the Régie may dismiss that person or body and disqualify him or it from exercising such functions for a period of five years. In that case, the Régie may, on the conditions and in the manner it determines, see to the replacement of the dismissed person or body.

Section 180 applies to every decision of the Régie made under this section.

183. The Régie, where it assumes the provisional administration of all or part of the pension plan, or the provisional administrator designated by it, may amend the plan to bring it into conformity with the law or to protect the rights of members or beneficiaries.

Before amending the plan, the Régie shall give the employer and the members or, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, every employees' association representing members an opportunity to submit their views. The Régie shall register every amendment made under this section.

Where the designated provisional administrator proposes to amend the pension plan, he shall, before amending the plan, transmit the notice provided for in section 26 to the pension committee, to the employer and to the members and, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, to every employees' association representing members. In that case, the Régie may, in addition to the grounds set out in section 28, refuse to register the amendment applied for if it is of the opinion that the amendment is not in the interest of the members or beneficiaries.

184. Every amendment to the plan whether it is made by the Régie or by the designated provisional administrator shall become effective on the date it is registered and shall be binding on the employer and members.

185. The Régie, where it assumes the provisional administration of all or part of the pension plan or, with the approval

of the Régie, the designated provisional administrator may terminate the plan in accordance with Chapter XII, which applies adapted as required.

Notice of the termination shall be given to the pension committee, the employer, the members affected thereby and, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, to every employees' association representing members. The notice shall indicate whether the termination is total or partial, the date on which it is to become effective and the members affected by the termination.

186. The Régie shall determine the remuneration and the allowances and indemnities, if any, to be paid to the designated provisional administrator.

The Régie is entitled to the reimbursement of expenses it has incurred for the provisional administration or for lending any of its officers to the designated provisional administrator.

187. At the request of the Régie, the designated provisional administrator shall make an inventory.

In addition, the designated provisional administrator shall, on the conditions and in the manner determined by the Régie, take out liability insurance or give any other security to guarantee his administration.

188. Without prejudice to the right to claim reimbursement before the court, the expenses relating to the provisional administration shall be borne by the pension fund unless the Régie elects to assume them.

CHAPTER XI

DIVISION AND MERGER

189. Any division of the assets and liabilities of a pension plan among several plans or any merger of all or part of the assets and liabilities of several pension plans into a single plan, in particular where an employer sells, assigns or otherwise disposes of his enterprise, is subject to the authorization of the Régie and to such conditions as it may prescribe.

190. The Régie shall not authorize a division of the assets and liabilities of a pension plan unless the value of the assets to be

transferred is equal to the value of the assets which, assuming that the plan were terminated in part on the effective date of the proposed division, would have been allocated, pursuant to subdivision 3 of Division II of Chapter XII, to the group of benefits attributable to the members or beneficiaries affected by the termination. Such value may, however, be limited to the value of the assets which, in the hypothetical situation described above, would have been required to pay the benefits of the affected members or beneficiaries, where the following conditions are met:

(1) the plan from which the assets are to be transferred provides for the allocation to the employer of any surplus assets determined upon termination;

(2) a new employer will assume responsibility, after the division, for the obligations of the plan toward the affected members or beneficiaries.

Moreover, where, in the hypothetical situation described in the first paragraph, the value of the allocated assets is not sufficient to pay all the benefits of the affected members or beneficiaries and where a new employer will be required, after the division, to assume responsibility for the obligations related to such benefits, the authorization of the Régie may be made conditional to mandatory payment into the pension fund by the employer then responsible for those obligations of an amount to form part of the assets to be transferred, equal to the amount to be funded to ensure full payment of such benefits.

191. The Régie shall not authorize the merger of all or part of the assets and liabilities of several plans unless all the plans include terms which, in relation to the allocation of surplus assets determined upon termination, have identical effects.

Moreover, if the proposed merger is to affect all the members or beneficiaries of the plans concerned, the Régie shall not grant its authorization unless all of the assets of every plan concerned are merged. If that is not the case, the authorization shall be granted only on the condition that the assets to be merged from any plan only part of the members or beneficiaries of which are affected be determined, as far as their benefits are concerned, in accordance with the provisions of section 190, which apply adapted as required.

192. Service credited to members under a pension plan involved in a division or a merger must be taken into account for the vesting of benefits under the pension plan into which assets have been transferred as a result of the division or merger.

For the purposes of section 34, any remuneration received or, as the case may be, any number of hours of employment completed before the division or merger must also be taken into account.

CHAPTER XII

WINDING-UP OF A PLAN

DIVISION I

TERMINATION

193. Except if termination is prevented by an agreement and except in the case of a pension plan imposed by an order or decree which does not authorize termination, an employer may terminate, in whole or in part, the plan to which he is a party by means of a written notice of termination to the affected members or, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, to the employees' association representing the members, to the pension committee, to the Régie and, where applicable, to the insurer.

The notice shall indicate whether the termination is total or partial, the members who are affected and the date on which the termination is to become effective; the date shall not precede the date on which member contributions ceased to be collected or, in the case of a non-contributory plan, the date on which the notice was given to the affected members.

In the case of a multi-employer pension plan, the notice of termination shall have effect only with respect to the employer who issues the notice and the affected members.

194. On receipt of a notice of termination, the Régie may either confirm the decision of the employer or, if the circumstances so justify, decide that the plan is not terminated, change the total or partial character of the termination indicated in the notice, reduce or increase the number of members affected or fix a different termination date.

The Régie may also terminate a pension plan in whole or in part where an employer who has not transmitted a notice of termination fails to collect member contributions or to pay into the pension fund or to the insurer his employer contributions or the member contributions he has collected, or where there is a decrease in the number of active members.

However, before amending the notice of termination or terminating the plan in whole or in part, the Régie shall give the pension committee and the employer an opportunity to present their views. Moreover, the Régie may order the committee to inform the persons or associations indicated that they may also submit their views within the time limits it fixes.

195. Every decision of the Régie relating to a notice of termination or terminating a pension plan shall indicate whether the termination is total or partial, the members who are affected and the date on which the termination is to become effective; in the case of a non-contributory plan, the effective date shall not be later than the date of the decision and, in the case of a contributory plan, not prior to the date on which member contributions ceased to be collected and not later than the date of the decision of the Régie.

196. Every decision of the Régie amending a notice of termination or terminating a pension plan shall be communicated to the pension committee, which shall forthwith transmit it to every member affected, or, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, to the employees' association representing the members, to the employer and, where applicable, to the insurer.

197. Within sixty days after the date of receipt of a decision of the Régie relating to a notice of termination or terminating a pension plan or within such extension of time as may be granted by the Régie, the pension committee shall cause a draft termination report to be prepared, for approval by the Régie, establishing, in particular, the benefits of each member or beneficiary affected and the value of such pension benefits, and containing the information prescribed by regulation. The draft report shall be prepared by an actuary. In the case of a defined contribution plan, it may be prepared by an accountant and, in the case of an insured plan, by the insurer.

The pension committee shall also, within the same time limit, obtain the opinion of the Régie as to the conformity of the draft report with this Act. If applicable, the Régie shall send a notice of conformity to the pension committee.

198. Within sixty days after receipt of the notice of conformity, the pension committee shall transmit to each member or beneficiary affected a statement setting out his benefits and their value as established in the draft termination report, accompanied with the following information:

(1) the methods of payment of the benefits, including the pension plan to which the member or beneficiary may, if he so elects, transfer such benefits, the options he may exercise and the time limits applicable;

(2) the surplus assets, if any, determined in the termination report and the person entitled thereto;

(3) a note to the effect that the draft termination report along with the data used to establish his benefits or their value and to determine the surplus assets may, within thirty days and without charge, be examined either at the office of the pension committee or, where the employer has one or several establishments located within 150 km of an active member's place of employment, at that establishment or the establishment designated by the committee, if there are more than one;

(4) a note to the effect that the member or beneficiary may, within thirty days, submit representations in writing to the pension committee, with a copy thereof to the Régie;

(5) any other information prescribed by regulation.

The pension committee is also required, within the same time limit, to send a copy of the draft termination report to the employer and, where applicable, to the insurer, and to inform them that they may, within thirty days, submit their views to the committee in writing, with a copy thereof to the Régie.

199. In the event of total termination of a pension plan, or partial termination affecting all members whose pension benefits are governed by this Act, or if the Régie so orders, the pension committee shall also, within thirty days after receiving the notice of conformity, cause to be published in a newspaper circulated in the region in Québec where the greatest number of active members reside, a notice inviting any person who has not received the statement provided for in section 198 and who believes that he is entitled to benefits under the plan or under this Act, to assert his rights with the committee or the Régie within thirty days after the publication.

In the case of a multi-employer pension plan, even a plan not considered as such pursuant to section 11, the notice shall be published for each employer that is a party to the plan in the region in Québec where the greatest number of members employed by that employer reside.

Subject to the provisions of section 233, failure by any person to assert any right he claims under the plan within the prescribed time

shall deprive that person of the right to claim payment of the corresponding benefits out of the assets of the 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 aforementioned statement for a reason outside his control.

200. The pension committee shall, within thirty days after the expiration of the period granted to members or beneficiaries to assert their rights or make representations, file with the Régie an application for approval of the draft termination report for which the notice of conformity was issued.

The application shall set out the date on which the statements of benefits of members or beneficiaries were sent or, if the statements were sent on different dates, the date of the last statement sent, the date of publication of the notice prescribed by section 199 and, where applicable, the amendments made to the draft report.

201. Before approving a draft termination report providing for the payment of surplus assets to the employer or to the members or beneficiaries affected, the Régie shall verify that the designated recipient is the person to whom the assets are to be allocated under the terms of the plan and that the determination of such surplus assets and payment thereof are, in other respects, in conformity with the law.

Where entitlement to the surplus assets is contested by reason, in particular, of amendments made to the plan, the Régie may approve the draft only in part and postpone its decision on the said surplus until final settlement of the dispute.

202. The decision of the Régie ruling on the application for approval shall be communicated to the pension committee, which shall forthwith inform, in writing, the employer, the insurer, where applicable, and every member or beneficiary affected. If the draft termination report is approved, the committee shall, in the same manner, notify every affected member or beneficiary of

- the manner in which his benefits will be paid;
- the statement of his benefits, or their value, as established in the approved draft report, where the benefits or value differ from those established in the statement sent to him pursuant to section 198.

DIVISION II

PAYMENT OF THE BENEFITS OF MEMBERS OR BENEFICIARIES

§ 1.—*Scope*

203. The Régie may exempt from the application of this division any partial termination of a multi-employer pension plan, if the members affected by the termination remain active members and if it considers it likely that most of them will continue to be active members in the short term.

204. Sections 210, 211 and 213 do not apply to the payment of the benefits of members or beneficiaries affected by the total or partial termination of a pension plan if, on the date of termination, the degree of solvency of the plan is equal to or greater than 100 per cent.

§ 2.—*Calculation of benefits and order of priority for their payment*

205. At the expiry of a period of sixty days following the decision of the Régie approving the termination report, or prior to the expiration of such period if all interested persons agree thereto, the pension committee or the insurer, as the case may be, shall pay the benefits of the members or beneficiaries affected by the total or partial termination of a pension plan, in accordance with the report and the provisions of this Act.

It may, however, at any time if the plan is solvent and with the authorization of the Régie if the plan is not solvent, pay a pension in payment at the date of termination of the pension plan or a pension the first instalment of which becomes payable after that date. Where the amount of pension benefits paid exceeds the benefits allocated to the recipient in the termination report for the period covered by the pension benefits, the recipient shall repay the overpayment; otherwise, the overpayment may be deducted from the benefits that remain to be paid to him.

206. Every member affected by the total or partial termination of a pension plan is entitled, in respect of the service credited to him under the plan to the date of termination, to the value of the normal pension, including benefits ancilliary to any pension to which he would have been entitled if he had retired on the day preceding the date of termination.

The amount of the pension shall, where the pension plan provides that it is to be calculated according to the progression of various

factors, such as the member's remuneration, be determined so as to take the progression into account until a date not prior to the date of termination.

However, if the member ceased to be a member before the termination date, and the plan provides that in that case such factors cease their progression on the date of termination of membership or on any later date set by the plan, the amount of the pension shall be determined so as to take the factors into account until the date on which the factors cease their progression.

207. Except in the case of a pension which must be guaranteed by an insurer pursuant to section 232, the value of the benefits of every member affected by the total or partial termination of the pension plan shall be determined on the basis of the same actuarial methods or assumptions.

208. The benefits allocated by a pension plan to a member affected by a partial termination of the plan shall be identical to those which would have been allocated to him in the event of a total termination.

209. For the purposes of this subdivision, the date of cessation of contribution payments is, depending on the first event leading to total or partial termination of a pension plan, the date on which the employer fails to pay into the pension fund or to the insurer, as the case may be, either his employer contributions or the member contributions collected by him.

210. Any benefit derived from an obligation arising from the pension plan and causing an initial unfunded liability not fully amortized at the date of cessation of contribution payments, shall be reduced for payment purposes if, at that date, the value of n in the following formula is greater than zero:

$$p - (c - a) = n$$

where

" p " represents the value established in accordance with section 206, of such unpaid benefit at the date of cessation of contribution payments;

" c " represents the initial value of the unfunded liability, discounted at the date of cessation of contribution payments and reduced by the value of the benefits already paid at that date;

“*a*” represents the value, discounted at the date of cessation of contribution payments, of the payments which, if the plan had not been terminated, would remain payable to amortize that portion of the unfunded liability which relates to the unpaid benefits at that date.

Values *c* and *a* shall be determined using the same interest rate as that used to determine the amortization amounts relating to the unfunded liability, taking into account the amortization period covered by each of the values.

The reduction is obtained by multiplying the amount of each such benefit by the following fraction, which shall not be greater than 1:

$$\frac{p - (c - a)}{p}$$

211. Any benefit, other than a benefit referred to in section 210, derived from obligations arising from an amendment to the pension plan made after 1 January 1990 and related to service completed in a period preceeding the effective date of the amendment shall, for payment purposes, be reduced

(1) by 100 per cent, if the period from the effective date of the amendment to the date of cessation of contribution payments is less than one year or if the effective date of the amendment is subsequent to the date of cessation of contribution payments;

(2) by 80 per cent, if the period is one year or more, but less than two years;

(3) by 60 per cent, if the period is two years or more, but less than three years;

(4) by 40 per cent, if the period is three years or more, but less than four years;

(5) by 20 per cent, if the period is four years or more, but less than five years.

Where the amendment is related to service completed in a period subsequent to the termination date of the plan, the reduction of benefits deriving therefrom shall operate according to the same rules.

However, no benefit derived from an amendment to the plan causing an improvement unfunded actuarial liability that is considered to be an initial unfunded actuarial liability under this Act may be reduced under this section.

212. Any amount due to a member or beneficiary which, pursuant to the pension plan and the provisions of this Act, must be paid following the total or partial termination of the plan shall bear interest, from the date of termination to the date of payment, either at the rate used to determine the value of his benefits or, where that value has been determined on the basis of an insurance proposal, at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada.

213. The benefits of the members or beneficiaries affected by the total or partial termination of a pension plan shall be paid in the following order:

(1) the amounts representing the following values, paid concurrently:

(a) the value of benefits accumulated in respect of service completed before the date of cessation of contribution payments;

(b) the value of member contributions paid into the pension fund or to the insurer, from the date of cessation of contribution payments to the date of termination of the plan;

(c) the value of additional voluntary contributions paid into the pension fund or to the insurer to the date of termination of the plan;

(d) the value of amounts received by the plan following a transfer under section 97 or 99;

(2) the amount representing the value of any reduction of benefits pursuant to section 210;

(3) the amount representing the value of any reduction of benefits pursuant to section 211;

(4) the interest on the aforementioned amounts;

(5) the amounts representing the following values, with interest, paid concurrently:

(a) the value of member contributions or additional voluntary contributions received by the employer from the date of cessation of contribution payments to the date of termination of the plan and not paid into the pension fund or to the insurer;

(b) the value of unpaid benefits accumulated in respect of service completed from the date of cessation of contribution payments to the date of termination of the plan.

The aforementioned values shall be discounted at the date of termination of the plan.

§ 3.—*Distribution of the assets*

214. The Régie may exempt from the application of this subdivision

(1) the partial termination of a pension plan that is solvent at the termination date;

(2) the total or partial termination of a multi-employer pension plan if it considers that the application of this subdivision would, given the type of plan involved, be complex and costly.

215. The assets of any pension plan that is partially terminated or of a multi-employer pension plan that is totally terminated shall be distributed among the groups of benefits constituted pursuant to this subdivision, according to the value of the benefits in each group and the order of payment established by this Act.

The assets of a multi-employer pension plan that is terminated in whole or in part shall, for the purpose of such distribution, be increased by the amount representing the contributions that any employer who is a party to the plan has, at the date of termination, failed to pay into the pension fund or to the insurer.

216. The benefits of the members or beneficiaries not affected by the partial termination of the pension plan shall be determined at the date of termination, in accordance with sections 206 to 211.

217. In the event of partial termination of a pension plan, the benefits accumulated under the plan by the members or beneficiaries shall be divided into two groups, one of which shall consist of the benefits of the persons affected by the termination.

Where more than one employer is involved in the partial termination of a multi-employer pension plan, the group of benefits of the members or beneficiaries affected by the termination shall be distributed in accordance with section 218.

218. In the event of total termination of a multi-employer plan, the benefits accumulated under the plan by the members or beneficiaries shall be divided into as many groups as there are employers, each group consisting of the benefits accumulated by members in respect of employment with the employer to whom the group of benefits pertains.

219. Where a member has been employed by more than one participating employer of a multi-employer pension plan that is totally or partially terminated, the benefits accumulated under the plan by that member shall be included in the group of benefits pertaining to the last employer by whom he was employed while he was an active member.

However, the first paragraph does not apply if the plan provides that, in such a case, the benefits accumulated by the member in respect of his employment with one of the employers shall be included in the group of benefits pertaining to that employer.

220. In the event of partial termination of a multi-employer pension plan, the benefits of members or beneficiaries which remained unpaid after a previous partial termination of the plan shall, if they have not been paid pursuant to section 229 or 230 or transferred pursuant to section 231, constitute a separate group of benefits.

221. If, after the assets have been distributed, a surplus remains, the surplus shall be so distributed among the groups of benefits constituted pursuant to this subdivision as to ensure that the obligations arising from the plan from which the benefits in each group derive maintain a funding level proportional to that which they would have had if the plan had not been terminated.

The funding level is determined without reference to the value of the obligations arising from the plan with respect to any portion of an initial or improvement unfunded actuarial liability remaining to be paid at the date of termination.

222. Any contribution which, at the date of total or partial termination of the pension plan, an employer who is a party to a multi-employer plan has failed to pay into the pension fund or to the insurer, as the case may be, must be deducted from that portion of the assets which is allocated to the group of benefits pertaining to that employer.

§ 4.—*Debts of the employer*

223. In the event of total or partial termination of a pension plan, the amount to be funded to ensure the full payment of all the benefits of the members or beneficiaries affected by the termination shall constitute a debt of the employer.

If, at the date of termination, the employer has failed to pay contributions into the pension fund or to the insurer, as the case may

be, the debt shall be the amount by which the amount to be funded exceeds such contributions.

In the case of a multi-employer plan, this section applies to every employer who is a party to the plan and to whom a group of benefits under subdivision 3 consisting of the benefits of the members or beneficiaries affected by the termination pertains.

224. Any amount owed by an employer under section 223 must, upon its determination, be paid into the pension fund or to the insurer, as the case may be. However, the Régie may, on the conditions it determines, allow any employer to spread the payment of such amount over a period of not more than five years.

Any amount not paid into the pension fund or to the insurer shall bear interest from the date of default, at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada.

225. Any amount paid by an employer under this subdivision shall be applied to the payment of benefits of members or beneficiaries in the order of priority established under this Act.

§ 5.—*Miscellaneous provisions*

226. If the assets, including income and capital gain derived from the investment of those assets after the date of termination, are not sufficient to pay all the benefits of the members or beneficiaries affected, the income and gain mentioned above shall first be applied to the payment of the interest referred to in section 212.

227. If the assets determined at the date of termination are not sufficient to pay all the benefits of equal rank of the members or beneficiaries affected, payment shall be made proportionately to the value of the benefits of each member or beneficiary. In addition, where benefits of equal rank have been the cause of several unfunded actuarial liabilities of the same nature, the payment of benefits shall be made from the earliest to the most recent.

The same applies where the income and capital gain from the investment of such assets after the date of termination are not sufficient to pay all the interest referred to in section 212.

228. Every amount recovered after the date of termination as due and outstanding contributions shall first be applied to the payment of the amounts referred to in paragraph 5 of section 213.

229. The benefits of a member affected by the partial termination of a multi-employer plan who is not receiving a pension under the plan at the date of termination need not be paid if the member is deemed to meet the requirements for entitlement to a deferred pension in respect of the service credited to him under the plan and if he remains an active member.

230. Pensions paid to members or beneficiaries affected by the partial termination of a pension plan shall continue to be paid under that plan except if the recipient, within thirty days after the day the information prescribed in section 198 is sent to him, requests that payment of the pension be henceforth assumed by an insurer.

Where that is the case, the pension paid by the insurer shall be a life pension and shall not be paid in any form other than that authorized by this Act.

231. The benefits, other than pensions referred to in section 230 or 232, accumulated under the pension plan by a member affected by the total or partial termination of the plan shall, if the member has been an active member for not less than two years, be paid by way of a transfer pursuant to sections 97 to 104, which apply adapted as required. In that case, the member shall, within thirty days after the information prescribed in section 198 is sent to him, indicate to the pension committee the plan to which he elects to transfer his benefits; if he fails to do so, the transfer shall be made to the plan proposed by the committee in the said sending of information.

However, in the event of a partial termination, the benefits of affected members shall be transferred in whole or in part only if the members apply therefor within the time prescribed in the first paragraph.

232. The vested pension of a member or beneficiary affected by the total termination of the pension plan, which is in payment on the date of the termination, shall be guaranteed by an insurer.

The pension shall be a life pension and shall not be paid in any form other than that authorized by this Act.

233. Any amount due to a member or beneficiary affected by the total termination of the pension plan shall, if the member or beneficiary cannot be found, be remitted to the Public Curator.

234. The assets of an uninsured plan under which certain refunds or benefits are guaranteed by an insurer shall, where the plan

is terminated in whole or in part, include the value of the benefits guaranteed by the insurer, for the purposes of the settlement of the benefits of the members or beneficiaries affected by the termination.

235. If, in the case referred to in section 234, the amount of insured benefits accumulated by the members or beneficiaries affected by the termination of the pension plan which the insurer would have to assume if the pension plan were not terminated exceeds the amount of such benefits as established pursuant to this chapter, the insurer, at the request of the pension committee, is bound to guarantee the uninsured benefits of the members or beneficiaries, up to the value of the excess amount.

This section shall not apply to impair the degree of solvency of the plan.

CHAPTER XIII

REVIEW

236. The Régie may, on its own initiative or at the request of any interested person, review any decision or order made by it or by any person or committee exercising a delegated power.

Except a decision or order made by the board of directors of the Régie, no decision or order shall be reviewed by the person who made it.

237. Applications for review shall be made in writing within sixty days after notification of the contested decision or order and shall contain a brief statement of the grounds on which it is based. The Régie may grant an extension or exempt a person from the consequences of a failure to act within the prescribed time if it is established that the application for review cannot or could not be filed within the prescribed time for a valid reason.

The application shall not suspend the execution of the decision or order unless the Régie decides otherwise.

238. The Régie shall rule on the application for review without delay, after giving every interested party an opportunity to submit its views.

The decision must include reasons and be notified in writing to the interested parties.

CHAPTER XIV

REGULATIONS OF THE RÉGIE DES RENTES DU QUÉBEC

239. The Régie may, by regulation,

(1) determine the form and content of any document, certificate or attestation prescribed by this Act and the regulations;

(2) determine the documents and information that must accompany every application for registration of a pension plan or amendment;

(3) determine what income security programs are contemplated by section 58;

(4) determine in what cases and on what conditions a pension may be replaced pursuant to section 91 by another life pension the amount of which may vary annually;

(5) determine the benefits which, pursuant to paragraph 6 of section 92, may replace a pension to which a member or his spouse has become entitled, and the conditions attached to such a replacement;

(6) determine, for the purposes of section 97 or 99, the plans or annuity contracts not governed by this Act that are included in the expression "pension plan" and the norms applicable to such plans or contracts, or make all or part of this Act and the regulations applicable to them;

(7) determine any document which may be examined pursuant to section 109;

(8) limit or prohibit the investment of the assets of a pension plan in certain forms of investments;

(9) determine the security which must be furnished by persons or bodies to whom or which a loan may be granted under section 172;

(10) determine the methods, assumptions, rules or factors which are applicable or prohibited for the purpose of calculating any contribution or benefit, refund, interest rate or rate of return and, where applicable, their actuarial value;

(11) determine the methods, assumptions, rules or factors which are applicable or prohibited for the purpose of calculating the assets and liabilities of a plan and distributing them among the groups of benefits in the event of a partial termination of the plan or in the event

of the total termination of a multi-employer pension plan, and for the purposes of a conversion of the plan into a plan of another type, the division of the assets and liabilities of a plan among several plans or the merger of the assets and liabilities of several plans;

(12) determine to what extent a document relating to any matter contemplated by this Act or the regulations and signed by a member of the board of directors or personnel of the Régie may be binding on the Régie or attributed to it;

(13) determine the rules of proof and procedure for any matter within its competence, the applicable time limits and the required documents;

(14) prescribe the fees payable for the financing of expenses incurred by the Régie for the administration of this Act and the regulations and for any formality prescribed by this Act or the regulations, including additional fees, not greater than twice the original fee, which may be imposed as an overdue charge;

(15) determine, among the provisions of any regulation made under this section, those provisions the contravention of which is punishable under Chapter XVI.

The regulations of the Régie shall be submitted to the Government for approval.

CHAPTER XV

FUNCTIONS AND POWERS OF THE RÉGIE DES RENTES DU QUÉBEC

240. In addition to the other functions conferred on it by this Act, the Régie shall ensure that pension plans are administered and operated according to law.

The Régie also has the duty to encourage financial planning for retirement, in particular by promoting the establishment and improvement of pension plans.

241. To exercise its functions under this Act, the Régie, in addition to the other powers conferred on it by this Act and the Act respecting the Québec Pension Plan, may

(1) conduct or commission surveys and research programs and make recommendations to the Minister on any matter related to this Act;

(2) provide information in the form of general or specific instructions regarding the administration of this Act;

(3) carry out the inspection of any pension plan;

(4) prepare, or cause to be prepared, any document prescribed or required by this Act and not furnished in accordance with this Act or the requirements of the Régie, at the expense of the person who is required to furnish it;

(5) in the case of a pension plan to which Chapter IX does not apply, require from the pension committee or the insurer, on the conditions and within the time limits established by the Régie, any document or information it considers necessary to measure the funding or solvency of the plan;

(6) require from the pension committee or the insurer, on the conditions and within the time limits established by the Régie, any document or information it considers necessary to ascertain whether a pension plan or an actuarial valuation is in conformity with this Act;

(7) carry out any mandate entrusted to it by the Government.

242. For the purpose of inspecting a pension plan, any inspector appointed by the Régie may, at any reasonable time, enter any premises where the pension committee, the person exercising a delegated power or any party to the plan keeps a document relating to the plan, examine such document, and take an extract therefrom or make a copy thereof.

Whoever has custody, possession or control of the document shall, on request, make it available to the inspector and facilitate his examination of it.

On request, the inspector shall identify himself and exhibit a certificate, issued by the Régie, attesting his capacity.

243. The Régie may make an order directing the pension committee, the person exercising a delegated power or any party to the pension plan to take any remedial measure determined by the Régie within the time and on the conditions it fixes, where it is of the opinion that

(1) his action is contrary to sound financial practices;

(2) the assumptions or methods used

– for the actuarial valuation of the plan,

- for the determination of the value referred to in section 60,
 - for the fixing of the interest rate applicable to contributions,
- or
- in the preparation of the termination report or any other document required by the Régie,

do not accord with generally accepted actuarial principles;

(3) the assumptions or methods used are inappropriate for the type of plan concerned or in view of its obligations, the financial position of the pension fund or the investment policy;

(4) the corrective measures transmitted by the pension committee under section 130 will not allow amortization of an unfunded actuarial liability within the period initially fixed.

244. The Régie may enter into agreements according to law with any government, government department, international body or agency of a government or international body for the purposes of this Act.

The agreements may, in particular,

(1) where a pension plan is governed both by this Act and by an Act of a legislative body other than the Parliament of Québec, determine on what conditions and to what extent each Act applies to the plan in respect of the employees referred to in section 1 who are parties to the plan and prescribe any other rule applicable to the plan;

(2) determine on what conditions and to what extent this Act applies to benefits or assets transferred from a pension plan governed by this Act to a pension plan governed by an Act of a legislative body other than the Parliament of Québec;

(3) provide for the delegation of powers that this Act confers on the Régie or that an Act of a legislative body other than the Parliament of Québec confers on a similar agency.

Every agreement bearing on a matter referred to in the second paragraph must be tabled in the National Assembly within fifteen days after the date on which it is entered into if the Assembly is in session or, if not, within fifteen days after the opening of the next session or resumption. The agreement acquires force of law from the time it is tabled in the National Assembly.

245. The Régie may delegate to a member of its board of directors, to a member of its personnel or to a committee formed by the Régie which includes any such member, any of its powers under this Act. The decision shall be published in the *Gazette officielle du Québec*.

246. No document relating to a matter contemplated by this Act is binding on the Régie or may be attributed to it unless it is signed by the president of the Régie or by a member of its board of directors or personnel but, in the latter case, only to the extent prescribed by regulation.

247. Every decision, order or notice of the Régie that must be notified to the members or beneficiaries may be either

(1) sent to the employer who shall, as soon as he receives it, post it conspicuously in his establishment in Québec employing the largest number of members concerned, in an area ordinarily frequented by them; or

(2) published in a newspaper circulated in the locality where that establishment is situated; or

(3) sent to the plan members who are members of the pension committee, to every other member of the committee designated by the plan members or, in the case of a plan established under a collective agreement or an arbitration award in lieu thereof, to the employees' association representing them.

Where the Régie uses either of the modes of transmission provided for in subparagraph 1 or 2 of the first paragraph, a summary of the decision or order may be substituted for the integral text thereof.

248. The Régie shall publish periodically a bulletin containing information on its activities and the general instructions it provides pursuant to paragraph 2 of section 241.

249. Where, in a matter upon which a decision must be rendered by the Régie, a problem arises as to the interpretation of this Act or a pension plan, the Régie may, where it is of the opinion that the interest of the parties to the plan warrants a prompt solution of the problem, postpone its decision and submit the problem to the court by way of a motion.

Articles 454 to 456 of the Code of Civil Procedure apply, adapted as required.

250. The Régie may apply by motion to a judge of the Superior Court to obtain an injunction in respect of any matter contemplated by this Act.

The application for an injunction shall in itself constitute an action.

The procedure provided for in the Code of Civil Procedure applies except that the Régie cannot be required to give security.

251. The Régie may, of its own initiative and without notice, intervene in any civil action pertaining to this Act to participate in the proof and hearing.

CHAPTER XVI

PENAL PROVISIONS

252. Every person is liable to a fine of \$500 to \$25 000 who :

(1) contravenes any provision of the first paragraph of section 14 or 16, of sections 17, 25, 26, 39, 41 to 43, 51 and 58, of the first paragraph of section 66, of sections 101, 114, 135, 152 to 154, 156, 161, 163, 164, 167, 169 to 171, 174 and 205, of subparagraph 1 of the first paragraph of section 247 and of section 303;

(2) contravenes any regulatory provision made under subparagraph 8 of the first paragraph of section 239 where, for the purposes of subparagraph 15 of the first paragraph of the said section, such contravention is punishable by a penalty;

(3) contravenes any order issued by the Régie under section 35 or 243;

(4) makes a false declaration, hinders or attempts to hinder the Régie, a member of its personnel, a provisional administrator, any person to whom the Régie has delegated a power or any inspector appointed by the Régie, in the carrying out of its or his duties.

253. Every person is liable to a fine of not over \$2 000 who

(1) contravenes any provision of sections 61, 106 to 109, 130, 137 to 139, 177, 198, 199, 202 or 309;

(2) contravenes any regulatory provision other than the provision referred to in paragraph 2 of section 252, where, for the purposes of subparagraph 15 of the first paragraph of section 239, such contravention is punishable by a penalty.

254. Where any of the offences under sections 252 and 253 is committed by a legal person, the amount of the fine is three times the amount prescribed.

255. Every person who, through encouragement or advice or by his orders, incites another person to commit an offence under section 252 or 253 is guilty of the offence and of any other offence committed by the other person as a result of such encouragement, advice or orders, if he knew or ought to have known that it would probably result in the commission of the offence.

256. Every person who, by his act or omission, aids another person to commit an offence under section 252 or 253 is guilty of the offence as if he had committed it himself, if he knew or ought to have known that his act or omission would probably result in aiding the commission of the offence.

257. In the event of a subsequent offence, the fine is twice the amount prescribed for a first offence.

258. In determining the fines, the court shall take into account the prejudice involved and the benefits derived from the offence, if any.

CHAPTER XVII

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

259. Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:

(1) all member or employer contributions paid or payable into the pension fund or to the insurer, with accrued interest;

(2) all amounts refunded or benefits paid under a pension plan or this Act and derived from member or employer contributions;

(3) except additional voluntary contributions and benefits resulting therefrom, all amounts transferred under section 97 or 99, with accrued interest, as well as refunds of or benefits resulting from such amounts.

260. Any amount that an employer fails to pay into the pension fund or to the insurer shall constitute a privileged claim on his movable and immovable property.

Such privilege shall be collocated at the same rank as the claims of suppliers as to movable property and as the claims for servant's wages as to immovable property.

The privilege on the immovable property is created and preserved on the conditions specified in article 2103 of the Civil Code of Lower Canada; the registration required by the said article may be effected by any interested person within sixty days after the day on which the interested person becomes aware of the employer's default.

261. Every natural or legal person and every body or group without juridical personality shall, if authorized under another Act to administer a pension plan governed by this Act, be regarded as pension committees.

ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

262. Section 21 of the Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2) is amended by replacing the second paragraph by the following paragraph:

“The Fund shall keep the investments of every plan contemplated by section 20 separate from its own investments and manage them in accordance with the Supplemental Pension Plans Act (1989, chapter *insert here the chapter number of this Act*), or Division IV of this Act, and, in the case of the investments of the plan contemplated by paragraph *c* of the said section, taking into account the general standards, if they have been prescribed, made by the pension committee in respect of the funds referred to in paragraph 2 of section 165 of the Act respecting the Government and Public Employees Retirement Plan.”

CITIES AND TOWNS ACT

263. Section 464 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended

(1) by striking out the word “permanent” in the second line of the first paragraph of paragraph 8;

(2) by striking out the last sentence in the fourth paragraph of paragraph 8;

(3) by replacing the fifth and sixth paragraphs of paragraph 8 by the following paragraphs:

“Every by-law to establish or amend a pension fund may have effect retroactively to the effective date of the pension fund or any amendment to it under the Supplemental Pension Plans Act (1989, chapter *insert here the chapter number of this Act*).

The Supplemental Pension Plans Act applies to every pension fund so established;”.

264. Section 465 of the said Act is replaced by the following section:

“**465.** The fringe benefits accumulated by an officer or employee who is subsequently employed by another municipality which offers such benefits are transferable at the request of such officer or employee.

The fringe benefits contemplated in the preceding paragraph include the benefits accumulated in a pension plan or fund administered by the employer, by the employer and the employees or by a third person on behalf of the municipal officers and employees; they do not include the benefits provided under a pension plan to which the Supplemental Pension Plans Act applies.”

CODE OF CIVIL PROCEDURE

265. Article 553 of the Code of Civil Procedure (R.S.Q., chapter C-25), amended by section 4 of chapter 17 of the statutes of 1988, is again amended by replacing subparagraph 7 of the first paragraph by the following subparagraph:

“(7) benefits granted out of a supplemental pension plan to which an employer contributes on behalf of his employees, any other amount that is exempt from seizure under an Act governing such plans, and contributions paid or payable into such plans;”.

MUNICIPAL CODE OF QUÉBEC

266. Article 704 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended by striking out the word “permanent” in the third line of the first paragraph.

267. Article 706 of the said Code is amended by replacing the second and third paragraphs by the following paragraphs:

“Every by-law to establish or amend a pension fund may have effect retroactively to the effective date of the pension fund or any

amendment to it under the Supplemental Pension Plans Act (1989, chapter *insert here the chapter number of this Act*).

The Supplemental Pension Plans Act applies to every pension fund so established.”

268. Article 707 of the said Code is replaced by the following article:

“**707.** The fringe benefits accumulated by an officer or employee who is subsequently employed by another municipality which offers such benefits are transferable at the request of such officer or employee.

The fringe benefits contemplated in the preceding paragraph include the benefits accumulated in a pension plan or fund administered by the employer, by the employer and the employees or by a third person on behalf of the municipal officers and employees; they do not include the benefits provided under a pension plan to which the Supplemental Pension Plans Act applies.”

269. Article 710 of the said Code is amended

(1) by striking out the words “full time” in the sixth line of the first paragraph;

(2) by adding, at the end of the first paragraph, the following sentence: “The application for the registration of the fund or any amendment to it filed with the Régie des rentes du Québec must be accompanied with a copy of the Minister’s approval.”;

(3) by replacing the second sentence of the third paragraph by the following sentence: “Subject to the Supplemental Pension Plans Act, such conditions are effective notwithstanding any inconsistent provision of any general law or special Act.”;

(4) by striking out the words “and to the Régie des rentes du Québec if joining the agreement entails an amendment to the by-law contemplated in article 704” in the fourth, fifth and sixth lines of the fifth paragraph.

ACT RESPECTING LABOUR STANDARDS

270. Section 49 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended

(1) by replacing the words “or a decree” in the third line of the first paragraph by the words “, an order or decree or a mandatory supplemental pension plan”;

(2) by striking out the words “within the meaning of the Act respecting supplemental pension plans (chapter R-17)” in the third and fourth lines of the second paragraph.

ACT RESPECTING THE QUÉBEC PENSION PLAN

271. Section 28 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing the word “No” in the first line by the words “Except where the Board exercises its power to review decisions or orders under Chapter XIII of the Supplemental Pension Plans Act (1989, chapter *insert here the chapter number of this Act*), no ”.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

272. Section 108 of the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10) is amended

(1) by replacing the words “régime supplémentaire de rentes” in the first and seventh lines of the French text by the words “régime complémentaire de retraite”;

(2) by replacing the words “an initial unfunded liability or an experience deficiency or both such liability and deficiency which is or are” in the second, third and fourth lines by the words “an initial unfunded actuarial liability, an improvement unfunded actuarial liability, a technical actuarial deficiency or a combination thereof, which is”.

PROFESSIONAL SYNDICATES ACT

273. Section 9 of the Professional Syndicates Act (R.S.Q., chapter S-40) is amended by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) Establish and administer pension plans to which the members or their employer may contribute;”.

274. Section 14 of the said Act is replaced by the following section:

14. Every pension plan contemplated by subparagraph 2 of the second paragraph of section 9 is governed by the Supplemental Pension Plans Act (1989, chapter *insert here the chapter number of this Act*) and the rules prescribed by the said Act with respect to multi-employer pension plans apply to any plan established for members of several professional syndicates, adapted as required.

For the purposes of this Act, the pension fund of a multi-employer pension plan is a special fund.”

275. Section 17 of the said Act is amended by inserting the words “, subject to the Supplemental Pension Plans Act,” after the word “shall” in the third line.

276. Section 21 of the said Act is amended by replacing the words “the special funds provided for in sub-paragraph 1” in the fourth and fifth lines of the first paragraph by the words “a special fund or a pension plan provided for in subparagraphs 1 and 2, respectively,”.

277. Section 25 of the said Act is amended by replacing subparagraph c of the third paragraph by the following subparagraph :

“(c) Then, provision shall be made for the maintenance and administration, in trust, of the special indemnity funds or the pension funds established in accordance with section 9 or 14;”.

278. Every provision of another Act requiring the approval of the Régie as a condition precedent to the coming into force of a plan, an amendment or an agreement with respect to the transfer of benefits, obligations or assets is hereby repealed as to that requirement.

279. This Act replaces the Act respecting supplemental pension plans (R.S.Q., chapter R-17), except the provisions enacted by the Act to amend the Act respecting supplemental pension plans (1988, chapter 79), which remain effective until the date fixed by the Government, and except to the extent that the latter Act continues to apply to a plan by virtue of section 292 or 312.

The last paragraph of section 9.1 and section 43.3 of the Act respecting supplemental pension plans are repealed.

280. Every registration of a plan made and every certificate of registration issued under the Act respecting supplemental pension plans remain valid.

The same applies to every other decision rendered under the said Act.

281. Every agreement entered into pursuant to section 74 of the Act respecting supplemental pension plans remains effective.

Such agreements may, however, be amended, replaced or repealed in accordance with this Act.

282. The Act respecting supplemental pension plans continues to apply to matters pending on 31 December 1989 before the Régie, except matters related to the approval of amendments to a pension plan reducing the amounts of the benefits of the members or beneficiaries or concerning

- the conversion of the plan into a plan of another type,
- the substitution of the employer who is a party to the plan,
- the division of the plan's assets and liabilities among several plans, or

- the merging of the assets and liabilities of several plans,

to which sections 20 to 23 and Chapter XI apply.

Any application for review filed after 31 December 1989 with respect to a decision rendered by the Régie before that date shall be decided in accordance with the Act respecting supplemental pension plans.

However, section 208 of this Act applies in respect of the settlement of any matter related to the partial termination of a plan occurring at any time from 23 March 1989 to 1 January 1990.

This section shall not be construed as invalidating any thing that has been validly done.

283. Proceedings for an offence against the Act respecting supplemental pension plans are instituted or continued in accordance with the said Act.

284. Unless otherwise provided by this chapter, this Act also applies in respect of service credited under a pension plan before 1 January 1990.

285. Member contributions or additional voluntary contributions paid by a member into the pension fund or to the insurer,

as the case may be, before 1 January 1990, with accrued interest, if any, shall bear interest from 1 January 1990 at the rate referred to in section 44.

286. Unless otherwise stipulated, section 60 does not apply to the vested benefit of a member or beneficiary in respect of service credited under the plan for a period of employment prior to 1 January 1990.

287. The value of the benefit to which section 60 does not apply and to which a member or a beneficiary is entitled in respect of service credited under the plan before 1 January 1990 shall be equal to or greater than the member contributions paid into the plan by the member before that date, with interest accrued to the date on which the value of the benefit is determined, calculated at the rate provided under the plan for the period prior to 1 January 1990 and at the rate referred to in section 44 for the subsequent period.

The value of the benefit shall be determined at the date on which the member or beneficiary becomes entitled thereto, on the basis of those actuarial assumptions and methods referred to in section 61 which are applicable to determine the value of other benefits vested at that date in respect of service credited after 31 December 1989.

288. Articles 2540 to 2555 of the Civil Code of Lower Canada, adapted as required, apply to the revocation of the designation of any person who, on 31 December 1989, is a beneficiary designated by a member.

A member may, however, where the beneficiary is his spouse and the designation has been made without a stipulation as to the revocability or irrevocability of the designation, render the designation revocable by way of a writing to that effect transmitted to the pension committee or to the insurer before 1 January 1992. If the member dies before that date and had not transmitted such a writing, the designation of his spouse is held to be revocable.

Within twelve months after 31 December 1989, the pension committee or the insurer shall transmit a copy of this section to every member to whom the second paragraph applies.

289. Notwithstanding the first paragraph of section 66, a member whose period of continuous employment is not terminated is not entitled to any refund of member contributions paid by him before 1 January 1990 or of employer contributions paid in his respect before that date.

290. Notwithstanding subparagraph 2 of the first paragraph of section 66, any member who, having ceased to be an active member within the meaning of paragraph 2 of section 36, is entitled to a deferred pension under section 69 although he is not entitled to a deferred pension in respect of service credited to him under the plan before 1 January 1990, is entitled to the refund of member contributions paid by him into the plan from the date he became a member to 1 January 1990, with accrued interest.

291. Notwithstanding sections 69 and 71, no member is entitled to a deferred pension or an early retirement pension in respect of service credited to him under the pension plan from the date he became a member to 31 December 1989, unless he meets the following requirements at the time he ceases to be an active member:

(1) he has attained forty-five years of age but not normal retirement age;

(2) he has completed at least ten years of continuous employment or has been an active member for at least ten years;

(3) in the case of an early retirement pension, his period of continuous employment will terminate within ten years of the date on which he attains normal retirement age.

The deferred pension shall be equal to or greater than the normal pension; the value of an early retirement pension shall be equal to or greater than the value of the normal pension, discounted at the date on which payment of the early retirement pension begins.

However, if the plan is amended after 31 December 1989 to increase the benefits accumulated in respect of service credited before 31 December 1989, section 69 applies to the benefits resulting from the increase.

292. Despite section 73, the normal retirement age applicable to benefits accumulated in respect of service credited under the pension plan before 1 January 1990 may, except for an early retirement pension, exceed the limit fixed by this section, provided it does not exceed the limit fixed by section 23 of the Act respecting supplemental pension plans.

293. Any pension postponed before 1 April 1982 shall be adjusted in such a manner as to ensure that the pension payable at the end of the postponement is actuarially equivalent to the pension the payment of which would have begun on such date had the pension not been postponed.

The actuarially equivalent value of the pension shall be determined according to actuarial assumptions identical to those which were transmitted to the Régie and which, at the date on which the member attains normal retirement age, are used to determine the value of the benefits to which section 60 applies and which are vested at that date.

294. The provisions of subdivision 7 of Division III of Chapter VI relating to the benefits of a surviving spouse prevail, where the death of a member occurs after 31 December 1989, over any inconsistent provision which, before that date, gave entitlement to death benefits.

295. Service credited to a member under the pension plan before 1 January 1990 shall not be taken into account for the purposes of section 86, unless the plan is amended after 1 January 1990 to increase the benefits accumulated in respect of service credited before that date, in which case section 86 applies to the benefits resulting from the increase.

In addition, the assigns of a member who dies after 31 December 1989 shall be entitled to a benefit equal to or greater than the member contributions paid by the member before that date, with interest accrued to the date of the member's death, calculated at the rate provided in the plan for the period prior to 1 January 1990 and at the rate referred to in section 44 for the subsequent period.

296. Section 87 does not apply to the spouse of a member where the member began to receive, before 1 January 1990, a pension under Division III of Chapter VI or subparagraph 1, 2 or 3 of the first paragraph of section 92.

297. Notwithstanding section 93, an amount equal to the benefits determined under the Old Age Security Act may serve, in determining the normal pension, to reduce the benefits accumulated by a member in respect of service credited under the plan before 1 January 1990 to the extent provided for in the plan before that date.

In no case may the reduction exceed $\frac{1}{35}$ of that amount in respect of any year of service credited to the member.

298. The amount referred to in the first paragraph of section 94 shall be determined as of 1 January 1990 if, before that date, the member becomes entitled to a pension the amount of which is not determined before that date.

299. Notwithstanding subparagraph 1 of the first paragraph of section 97, any member who becomes entitled to a deferred pension in respect of service credited under the plan after 31 December 1989, although he is not entitled to a deferred pension in respect of service credited to him under the plan before that date, is entitled to transfer member contributions paid by him into the plan before that date, with accrued interest, if any.

Notwithstanding subparagraph 2 of the first paragraph of the said section, a member is entitled to transfer the amount representing the value of a benefit to which he has become entitled before 1 January 1990 only if the plan so provides.

300. Notwithstanding section 97, no member of an insured plan effective on *(insert here the date of the tabling of this bill as reprinted)* is entitled to the transfer of contributions paid in respect of service credited under the plan before 1 January 1990 or to interest, or to the transfer of the amount representing the value of the benefits to which he is entitled in respect of such service where the following requirements are met:

(1) the plan gives entitlement to a deferred pension in respect of the aforementioned service for all members who remain active members on 1 January 1990 and for all members who ceased to be active members from *(insert here the date of the tabling of this bill as reprinted)* to 1 January 1990;

(2) the deferred pension has been, in respect of each member referred to in paragraph 1, the subject of a contract entered into with an insurer who, besides guaranteeing the pension and, where the plan so provides, benefits for the member's beneficiaries or assigns, has undertaken to pay to them any other benefits, such as rebates, that he would otherwise have been required to pay to the employer after *(insert here the date of the tabling of this bill as reprinted)*.

301. Where an insurer has guaranteed, before *(insert here the date of the tabling of this bill as reprinted)*, refunds or benefits accrued by a member in respect of service credited to him under an uninsured pension plan before that date, the transfer of such benefits pursuant to section 97 or 99 may, if the member was an active member at that date, be made by subrogating the member in the rights of the pension fund as regards the contract entered into with the insurer.

The value of the guaranteed benefits so transferred shall not exceed the value of the refunds or benefits that would result therefrom if the latter value were determined on the basis of actuarial assumptions and methods identical to those which, on the date of the

subrogation made in favour of the member, are used to determine the value of unguaranteed benefits to which section 60 applies and that are vested on that date.

302. Any liability referred to in paragraph *c* of section 1 of the General Regulation respecting supplemental pension plans that is determined in a report relating to an actuarial valuation of the plan filed with the Régie before 1 January 1990 constitutes an initial unfunded actuarial liability within the meaning of paragraph 1 of section 121.

Any deficiency referred to in paragraph *d* of section 1 of the said regulation that is determined in a report relating to an actuarial valuation of the plan filed with the Régie before 1 January 1990 constitutes a technical actuarial deficiency within the meaning of paragraph 3 of section 121.

303. Every person or body administering a pension plan shall, within five years from the date the plan becomes subject to this Act or within any extension of that period that may be granted by the Régie, regularize any investment of the assets of the plan made before that date which is not in conformity with this Act.

An additional period of twelve months shall be granted for the adoption of an investment policy which is in conformity with sections 164 and 165.

However, any investment made before 1 January 1990 in the name of the plan may, notwithstanding section 166, remain in the name of the plan.

304. Where a pension plan is under trusteeship on 1 January 1990, the curator appointed under section 56 of the Act respecting supplemental pension plans shall continue to act as the provisional administrator as if he had been appointed under this Act.

305. Notwithstanding section 213, in the event of total or partial termination of a pension plan, the amount representing, at the date of termination, the value of any reduction of benefits which, pursuant to section 210, is made to offset an initial unfunded actuarial liability determined in a report relating to an actuarial valuation of the plan filed with the Régie before 1 January 1990, shall be paid

(1) immediately before the amount referred to in subparagraph 2 of the first paragraph of section 213; or

(2) after the amounts referred to in the first paragraph of the said section, if it is to be paid out of the amounts paid by the employer in respect of a debt under section 223.

306. The debt referred to in section 223 does not include the amount representing the unpaid value of any benefit reduction which, pursuant to section 210, has been made to offset an unfunded actuarial liability not fully amortized at the date of termination of the pension plan and determined in a report on an actuarial valuation of the plan filed with the Régie before 1 January 1990.

307. The obligation provided for in section 101 whereby transferred amounts must be paid in the form of a life pension shall not apply to amounts transferred pursuant to section 231 and relating to benefits accumulated under the pension plan in respect of service credited before 1 January 1990 unless, at the time of total or partial termination of the plan, the member had attained 45 years of age and completed a period of continuous employment of not less than ten years, or had been an active member for a period of not less than ten years.

308. In addition to the transitional provisions contained in this chapter, the Régie may, by regulation, make any other transitional provision to facilitate the administration of this Act; the regulations may, in particular, determine on what conditions and to what extent this Act applies to a pension plan that is also governed by an Act of a legislative body other than the Parliament of Québec and prescribe any other rule applicable to such plan.

The regulations shall be submitted to the Government for approval; they may have retroactive effect to any date prior to the date on which they become effective, but not prior to 23 March 1989.

309. Every amendment required to bring the provisions of any pension plan that is effective on 1 January 1990 into conformity with this Act shall be filed with the Régie for registration, within twelve months after 1 January 1990 or within any extension of that period which may be granted by the Régie.

310. Notwithstanding section 309, the amendments required to bring the provisions of a pension plan of which all or part of the members are governed by a collective agreement, an arbitration award in lieu thereof or an order or decree imposing a collective agreement which are in force on 1 January 1990 into conformity with this Act shall be submitted to the Régie for registration within three

months after the date of the signing of a new collective agreement, of the rendering of the arbitration award in lieu thereof, of the extension or renewal of the order or decree or of the coming into force of an order or decree replacing an order or decree which has expired.

The Régie may grant an extension of time.

311. From such time as the amendments referred to in sections 309 and 310 are registered in accordance with this Act, they have effect

(1) in the case of section 309, from 1 January 1990;

(2) in the case of section 310,

(a) with respect to employees governed by a collective agreement, an arbitration award in lieu thereof or an order or decree in force on 1 January 1990, from the date of expiry of the agreement or award or from the date of expiry, extension or renewal of the order or decree;

(b) with respect to employees not governed by a collective agreement, an arbitration award or an order or decree referred to in subparagraph *a*, from 1 January 1990.

312. The provisions of a collective agreement, of an arbitration award in lieu thereof or of an order or decree imposing a collective agreement and the terms of a pension plan applicable to employees governed by the agreement, award, order or decree, in force on 1 January 1990, which are incompatible with the provisions of this Act shall prevail over the provisions of this Act until the date of expiry of the agreement or award or until the date of expiry, extension or renewal of the order or decree.

The Act respecting supplemental pension plans shall continue, for the same period, to apply to the plan, to the extent that the employees concerned are governed by the said collective agreement, award, order or decree.

313. Any unfunded actuarial liability resulting

(1) from an amendment to the plan that is an amendment referred to in section 309 or 310 made for the purpose of bringing the plan into conformity with Chapter IV, V or VI, or

(2) from an amendment to the plan made for the purposes of the application of section 44, 45, 60, 69 or 86 to benefits accumulated in respect of service credited under the plan before 1 January 1990,

constitutes an improvement unfunded actuarial liability.

Such an improvement unfunded actuarial liability may be considered to be an initial unfunded actuarial liability.

314. Every person or body who or which, on 31 December 1989, administers a pension plan, may, despite the fact that he or it is not a pension committee established as prescribed by section 142, continue to administer the plan until the expiry of the time prescribed in section 309 or 310 for the filing of amendments or until such later date that may be set by the Régie. In such a case, the person or body shall, during his or its administration, be regarded as a pension committee.

315. In any other Act and in any regulation, decree, order, agreement, contract or other document, unless otherwise required by the context, and taking into account any necessary changes

(1) a reference to a provision of the Act respecting supplemental pension plans is a reference to the corresponding provision of this Act ;

(2) the expression "Act respecting supplemental pension plans" is replaced by "Supplemental Pension Plans Act" and the expression "régime supplémentaire de rentes" is replaced by the expression "régime complémentaire de retraite".

[[**316.** The appropriations allocated to the administration of the Act respecting supplemental pension plans shall be transferred to permit the administration of this Act.

Supplementary appropriations allocated to the administration of this Act for the fiscal year during which this Act comes into force shall be taken out of the consolidated revenue fund to the extent determined by the Government.]]

317. The Minister of Manpower and Income Security is responsible for the administration of this Act.

318. This Act comes into force on 1 January 1990 ; however,

(1) sections 34 and 35 come into force on 1 June 1990 ;

(2) sections 20 to 23 and Chapter XI have effect from 23 March 1989 ;

(3) sections 300 and 301 have effect from (*insert here the date of the tabling of this bill as reprinted*).

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