

SECOND SESSION  
THIRTY-FIRST LEGISLATURE

# ASSEMBLÉE NATIONALE DU QUÉBEC

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## Bill 39

An Act respecting the class action

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First reading

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M. PIERRE MAROIS

Ministre d'État au développement social

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CHARLES-HENRI DUBÉ, ÉDITEUR OFFICIEL DU QUÉBEC

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## Bill 39

An Act respecting the class action

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

### TITLE I

#### CLASS ACTION

**1.** Article 954 of the Code of Civil Procedure, enacted by section 1 of chapter 86 of the statutes of 1971 and amended by section 58 of chapter 83 of the statutes of 1975, is again amended by replacing the first paragraph by the following:

**“954.** Nevertheless, this book does not apply to demands for alimentary pensions, suits for slander or libel, rents or any matter which may affect the future rights of the parties, nor to the recovery of a small claim when pursued through a class action.”

**2.** The said Code is amended by inserting, after article 998, the following:

## EXPLANATORY NOTES

*This bill introduces the class action. It comprises three titles. The object of the first title is to amend the Code of Civil Procedure by adding Book Nine, on the class action; the second title creates the Fonds d'aide aux recours collectifs and the third title provides for certain amendments to the Civil Code and to the Legal Aid Act.*

### TITLE I OF THE BILL

*Title One comprises three sections.*

*Section 1 excludes the application of Book Eight of the Code of Civil Procedure (recovery of small claims) in the matter of class actions.*

*Section 2 adds Book Nine to the Code, grouping the provisions on the class action (articles 999 to 1051). Title One contains introductory provisions and it confers exclusive jurisdiction in class actions on the Superior Court (article 1000).*

*Title Two provides that the bringing of a class action must be previously authorized by the court (article 1002), which ascertains that certain conditions are met (article 1003). Thus, the applicant must, inter alia, establish that the persons on whose account he acts have, in common, identical, similar or related questions of law or fact to bring, and the court must ascertain that the person to whom it ascribes the status of representative is in a position to represent the members of the group adequately. Other sections provide for the choice of the district in which the action is brought (article 1004), the content of the judgment granting the motion (article 1005), the notice to be given to the members of the group (article 1006), the right of a member to request his exclusion and the manner in which this may be done (articles 1007 and 1008), and appeal from the judgment authorizing the bringing of the class action (article 1010).*

## “BOOK NINE

### “CLASS ACTION

#### “TITLE ONE

##### “INTRODUCTORY PROVISIONS

**“999.** In this book, unless the context indicates a different meaning,

(a) “judgment” means a judgment of the court;

(b) “final judgment” means the judgment which decides the questions of law or fact dealt with collectively;

(c) “member” means a person who is part of a group on behalf of which a person brings or intends to bring a class action;

(d) “class action” means the procedure which enables one member to sue without a mandate on behalf of all the members.

**“1000.** The Superior Court hears exclusively, in first instance, suits brought under this book.

**“1001.** Unless the chief justice decides otherwise, the same judge designated by him hears the entire proceedings relating to the same class action.

Where the chief justice considers that the interest of justice so requires, he may designate such judge notwithstanding articles 234 and 235.

#### “TITLE TWO

##### “AUTHORIZATION TO INSTITUTE A CLASS ACTION

**“1002.** A member cannot institute a class action except with the prior authorization of the court, obtained on a motion.

The motion states the facts giving rise thereto, indicates the nature of the recourses for which authorization is applied for, and describes the group on behalf of which the member intends to act; the allegations of the motion are supported by an affidavit. It is

*Title Three of the proposed Book enacts the rules to be followed for the conduct of the action (articles 1011 to 1026). The object of these rules is to facilitate the bringing of the action and to protect the interests of the members and of the parties. Thus, it is provided that the demand may be perempted if not brought within three months of the authorizaiton (article 1011), that the defendant may urge preliminary exceptions only if they are common to a substantial part of the members of the group (article 1012), and the proof or hearing cannot take place before the expiry of the delay granted to every member to request his exclusion (article 1013). Articles 1014 to 1021 amend the ordinary rules in the matters of admission, acceptance of offers, amendments, discontinuance, intervention, examination on discovery, medical examination, examination out of court or examination on articulated facts. Article 1022 enables the court to revise the judgment which authorized the bringing of the action or to change the composition of the group, while articles 1023 and 1024 regulate the cases of waiver of the status of representative or of substitution of the representative. Article 1025 provides that the representative cannot transact, or accept a tender or a confession of judgment that is not for the whole of the demand, without the authorization of the court, and article 1026 provides for the continuance of the suit in the case where the authorization to bring the suit is annulled.*

*Title Four of the proposed Book deals with final judgment on the questions of law or fact dealt with collectively (articles 1027 to 1044). This title comprises four chapters. Chapter One deals with the content and effects of the final judgment. Thus, the judgment binds every member who has not requested his exclusion (article 1027) and it may, if it awards damages, order that the claims of the members be recovered collectively or be the object of individual claims (article 1028). This chapter also provides for the content of the notice given to the members when the judgment is rendered (article 1030). Chapter Two deals with collective recovery, and it provides in which case such recovery takes place (article 1031), the order of collocation of the claims (article 1035), and the constitution of the balance and rules governing distribution of it, i.e., of the sums of money that are not distributed to the members and that remain after the collocation (articles 1033, 1034 and 1036). Chapter Three provides the procedure that applies to deciding the individual claims (articles 1037 to 1040), while Chapter Four regulates the right of appeal from the judgment on collective questions (articles 1041 to 1044).*

*Finally, Title Five of the proposed Book contains miscellaneous provisions designed to hasten the conduct of the action and to inform the members (articles 1045 and 1046). It also deals with the notice to a municipality (article 1047), the right of a corporation to be a representative (article 1048), the necessity for the*

accompanied with a notice of at least ten days of the date of presentation and is served on the person against whom the applicant intends to exercise the class action.

**“1003.** The court authorizes the bringing of the class action and ascribes the status of representative to the member it designates if of opinion that:

(a) the recourses of the members raise identical, similar or related questions of law or fact;

(b) the composition of the group makes the application of article 59 or 67 difficult or impracticable; and

(c) the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately.

**“1004.** If the court grants the motion, it refers the record to the chief justice who, taking into account the interest of the members, fixes the district in which the class action is brought.

**“1005.** The judgment granting the motion:

(a) describes the group whose members will be bound by any judgment;

(b) identifies, as far as possible, the principal questions to be dealt with collectively and the related conclusions sought;

(c) orders the publication of a notice to the members.

The judgment also determines the date after which a member can no longer request his exclusion from the group; the delay for exclusion cannot be less than thirty days nor more than six months after the date of the notice to the members. Such delay is peremptory; the court may nevertheless permit the exclusion of a member who shows that in fact it was impossible for him to act sooner.

**“1006.** The notice to the members indicates:

(a) the principal questions to be dealt with collectively and the related conclusions sought;

(b) the right of a member to intervene in the class action;

(c) the district in which the class action is to be brought;

(d) the right of a member to request his exclusion from the group, the formalities to be followed and the delay for requesting his exclusion;

(e) the fact that a member who is not a representative or an intervener cannot be called upon to pay the costs of the class action; and

*representative to be represented by an attorney (article 1049), the case of minors who are members of a group (article 1050) and the application of the other books of the Code of Civil Procedure in the case of a class action (article 1051).*

*Section 3 is for concordance.*

## TITLE II OF THE BILL

*This title institutes a form of assistance to facilitate the bringing of class actions and it creates an agency, the Fonds d'aide aux recours collectifs, to achieve this objective. This title contains five chapters.*

*Chapter I contains certain definitions (section 4).*

*Chapter II establishes the Fonds d'aide aux recours collectifs (section 5), the object of which is to ensure the financing of class actions (section 6). Sections 7 to 18 contain the rules governing the administration of the Fonds.*

*Chapter III deals with assistance (sections 19 to 35). It contains the rules for the granting of assistance (sections 19 to 25), it determines the respective rights and obligations of the Fonds and of the recipient of assistance (sections 26 to 32), and it institutes a right of appeal to the Provincial Court from a decision of the Fonds refusing to grant assistance (sections 33 to 35).*

*Chapter IV gives regulatory powers to the Government and the Fonds, and provides for the publication of the regulations (sections 36 to 39).*

*Chapter V contains financial provisions (sections 40 to 43). It provides in particular that in certain cases, the Fonds will withhold a percentage on any balance established under Book Nine of the Code of Civil Procedure (section 40).*

## TITLE III OF THE BILL

*Title III of the bill contains miscellaneous provisions.*

*Sections 44 to 49 provide certain amendments to the Civil Code in order to establish concordance between this code and the bringing of the class action, in the matters of the admissibility of proof by testimony, the authority of the res judicata, and prescription.*

*Section 50 provides that the Ministre de la justice is responsible for the application of this act.*

(f) any other information the court deems it useful to include in the notice.

**“1007.** A member may request his exclusion from the group by notifying the prothonotary of his decision, by registered or certified mail, before the expiry of the delay for exclusion.

A member who has requested his exclusion is not bound by any judgment on the demand of the representative.

**“1008.** A member is deemed to have requested his exclusion from the group if he does not, before the expiry of the delay for exclusion, discontinue a suit he has brought which the final judgment on the demand of the representative would decide.

**“1009.** In the case of an application for a declaratory judgment, the notice replaces, with respect to the members, the service provided for by article 454.

**“1010.** The judgment on the motion is subject to appeal by the applicant or the respondent or, by leave of a judge of the Court of Appeal, by a member of the group on behalf of which the motion had been presented.

The appeal is heard and decided by preference.

### “TITLE THREE

#### “CONDUCT OF THE ACTION

**“1011.** The representative brings his demand in accordance with the ordinary rules. If he does not do so within three months of the authorization, the court may declare it perempted upon motion by any interested party served on the representative and accompanied with a notice of at least ten days of its presentation.

So long as the motion is not decided, the representative may still avoid the declaration of peremption by bringing his demand; in such case, the court grants the motion, but for the costs only.

**“1012.** The defendant may urge a preliminary exception against the representative only if it is common to a substantial part of the members and bears on a question dealt with collectively.

**“1013.** Proof or hearing of the demand brought by the representative cannot take place before the expiry of the delay for exclusion.



**“1014.** An admission by a representative binds the members unless the court considers that the admission causes them prejudice.

**“1015.** The representative is deemed to have a sufficient interest notwithstanding his acceptance of the defendant's offers respecting his personal claim. However, another member may request to be substituted for him.

**“1016.** The representative cannot amend a proceeding, or discontinue, in whole or in part, the action, a proceeding or a judgment, without the permission of the court.

**“1017.** A member cannot intervene voluntarily in demand except to assist the representative, to aid his demand or to support his pretensions.

The court admits the intervention if of opinion that it is useful to the group and if the member intervening has not requested his exclusion from the group.

**“1018.** In the case of a conservatory intervention, the court may at any time limit the right of an intervener to produce a proceeding or to participate in the proof or hearing, if it is of opinion that the intervention is prejudicial to the conduct of the action or is contrary to the interests of the members.

**“1019.** A party cannot, before the final judgment, submit a member other than a representative or an intervener to an examination on discovery or a medical examination unless the court considers the examination on discovery or medical examination useful to the adjudication of the questions of law or fact dealt with collectively.

**“1020.** A witness cannot be heard out of court without the permission of the court.

**“1021.** A member cannot be examined on articulated facts.

**“1022.** The court may, at any time, upon the application of a member or of a party, revise the judgment authorizing the bringing of the class action if it considers that the conditions set forth in paragraph *a* or *b* of article 1003 are no longer met.

The court may then amend the judgment authorizing the bringing of the class action or annul it, or allow the representative to amend the conclusions sought.

In addition, if the circumstances so require, the court may, at any time, and even *ex officio*, change or divide the group.

**“1023.** The person wishing to waive his status of representative can only do so with the authorization of the court.

The court accepts the waiver if it is able to ascribe the status of representative to another member.

**“1024.** A member may, by motion, apply to the court to have himself or another member substituted for the representative.

The court may substitute the applicant or another member consenting thereto for the representative if it is of opinion that the latter is no longer in a position to represent the members adequately.

The substituted representative accepts the trial at the stage it has then reached; he may, with the authorization of the court, refuse to ratify the proceedings already had if they have caused an irreparable prejudice to the members. He cannot be bound to pay the costs and other expenses for proceedings prior to the substitution, unless the court orders otherwise.

**“1025.** Transaction or acceptance of a tender or of a confession of judgment that is not for the whole of the demand or that is not unconditional, is valid only if approved by the court.

The judgment determines, if such is the case, the terms and conditions of application of articles 1029 to 1040.

**“1026.** If, after the demand of the representative is brought, the court annuls the judgment authorizing the bringing of the class action, the suit continues between the parties in accordance with the ordinary rules; where such is the case, the record is returned to the competent court.

## “TITLE FOUR

### “JUDGMENT

#### “CHAPTER ONE

##### “CONTENT AND EFFECT OF THE FINAL JUDGMENT

“**1027.** Every final judgment binds the member who has not requested his exclusion from the group.

“**1028.** Every final judgment condemning to damages or to the reimbursement of an amount of money orders that the claims of the members be recovered collectively or be the object of individual claims.

“**1029.** The court may, *ex officio* or upon application of the parties, provide measures designed to simplify the execution of the final judgment.

“**1030.** When the final judgment is executory, the court of first instance orders the publication of a notice.

The notice contains a description of the group and indicates the tenor of the judgment.

If the final judgment provides that a member may file his claim, the notice also indicates the questions remaining to be determined, the information and documents that must accompany the claim and any other information the court deems it useful to include in the notice.

#### “CHAPTER TWO

##### “COLLECTIVE RECOVERY

“**1031.** The court orders collective recovery if the evidence produced enables the establishment with sufficient accuracy of the total amount of the claims of the members; it then determines the amount owed by the debtor even if the identity of each of the members or the exact amount of their claims is not established

**“1032.** The judgment ordering the collective recovery of the claims orders the debtor to deposit the established amount in the office of the court; it may, for the reasons indicated therein, fix terms and conditions of payment.

The prothonotary acts as seizing officer on behalf of the members.

**“1033.** The judgment ordering collective recovery provides for the individual liquidation of the claims of the members or the distribution of an amount to each of them, in the manner provided in articles 1037 to 1040.

Amounts not claimed or not distributed constitute the balance.

**“1034.** The court may, if of opinion that the liquidation of individual claims or the distribution of an amount to each of the members is impossible or too expensive, refuse to proceed with it and provide for the distribution of the balance of the amounts recovered collectively after collocating the law costs and the fees of the representative's attorney.

**“1035.** The claims are collocated in the following order:

1. law costs, including the costs of notification;
2. the fees of the representative's attorney; and
3. the claims of the members, if any.

**“1036.** The court disposes of the balance in the manner it determines, taking particular account of the interest of the members, after giving the parties and any other person it designates an opportunity to be heard.

## “CHAPTER THREE

### “INDIVIDUAL CLAIMS

**“1037.** This chapter applies where it is expedient to render judgment upon the individual claims of the members.

**“1038.** When the final judgment is executory, a member may within one year file his claim at the office of the court of the district in which the class action was heard or of any other district as determined by the court.

**“1039.** The court decides the claim of the member or orders the prothonotary to render judgment in accordance with the terms and conditions it determines.

The court may, if it deems it necessary in the interest of justice and of the parties, determine special modes of proof and procedure.

**“1040.** The defendant may urge a preliminary exception against a claimant which article 1012 prevented him from moving earlier.

## “CHAPTER FOUR

### “APPEAL

**“1041.** The final judgment is subject to appeal *pleno jure* by a party other than an intervener contemplated in article 1017.

**“1042.** If the representative does not appeal or if his appeal is dismissed for one of the reasons provided for in paragraph 1 or 3 of the first paragraph of article 501, a member may, within sixty days of the expiry of the delay to appeal or of dismissal of the appeal, apply to the Court of Appeal for leave to appeal and to be substituted for the representative. The Court grants the motion if it is of opinion that the interest of the members so requires.

The delay provided for in this article is peremptory.

**“1043.** The appealing party addresses the court of first instance for determination of the notice to be given to the members.

**“1044.** If the Court of Appeal, in opposition to the Superior Court, maintains the demand of the representative, in whole or in part, it may order the record of the action returned to the court of first instance so that collective recovery may be proceeded with or judgment may be rendered on the individual claims of the members.

## “TITLE FIVE

## “MISCELLANEOUS PROVISIONS

“**1045.** The court may, at any stage of the proceedings in a class action, prescribe measures designed to hasten their progress and to simplify the proof, if they do not prejudice a party or the members; it may also order the publication of a notice to the members when it considers it necessary for the preservation of their rights.

“**1046.** When the court orders the publication of a notice, it determines the date, form and mode of such publication; where such is the case, it indicates, by naming or describing them, those members who will be notified individually. The notice indicates the description of the group and the names and addresses of the parties.

Except in the cases contemplated in articles 1006 and 1030, the court also prescribes the information contained in the notice.

“**1047.** Where the Cities and Towns Act, the Municipal Code or a municipal charter provides for the sending of a notice of claim as a precondition to the exercise of a recourse, the notice given by a member is valid for all the members of the group and the insufficiency of the notice cannot be urged against the representative.

“**1048.** A corporation one of whose members or shareholders is a member of a group may apply for the status of representative; it is then deemed to be a member of such group and to have the personal recourse of the corporation member or shareholder it designates.

The same applies in the case of a group contemplated in the second paragraph of article 60.

Where an affidavit is required from a corporation or group acting under this article, the affidavit is given by the member or shareholder designated under the first paragraph.

“**1049.** The representative or member who applies to act as such must be represented by an attorney.

“**1050.** For the application of this book, except articles 1002 to 1006, the holder of parental authority may act *ex officio* as tutor to a minor child who does not have a tutor.

**“1051.** The provisions of the other books of this Code that are inconsistent with this book, particularly the second paragraph of article 172 and articles 270 to 272 and 382 to 394, do not apply to suits for the purposes of which the class action is brought.”

**3.** The Code of Civil Procedure is amended by replacing the words “BOOK NINE”, enacted by section 83 of chapter 83 of the statutes of 1975, by the words “BOOK TEN”.

## TITLE II

### ASSISTANCE TO CLASS ACTIONS

#### CHAPTER I

##### DEFINITIONS

**4.** In this title, unless the context indicates a different meaning,

(a) “assistance” means the assistance granted under Chapter III of this title;

(b) “recipient” means the person who receives assistance;

(c) “Fonds” means the Fonds d’aide aux recours collectifs established by section 5;

(d) “representative” means the person who is ascribed the status of representative for the bringing of a class action, in accordance with article 1003 of the Code of Civil Procedure;

(e) “applicant” means a person who applies for assistance.

#### CHAPTER II

##### THE FONDS

**5.** An agency is established under the name of “Fonds d’aide aux recours collectifs”.

The Fonds is a corporation within the meaning of the Civil Code and has the general powers of such a corporation and the special powers conferred upon it by this act.

**6.** The object of the Fonds is to ensure the financing of class actions in the manner provided for by this title.

**7.** The Fonds shall be administered by three persons including a president, appointed for not more than three years by the Government, after consultation with the Bar of the Province of Québec and the Commission des services juridiques.

The Government shall fix, where necessary, the salary, additional salary or fees that may be paid to each of the administrators, and their allowances or indemnities.

**8.** An administrator shall remain in office on the expiry of his term until he is reappointed or replaced.

**9.** If an administrator is unable to act by reason of absence or illness, the Government may appoint a person to replace him temporarily.

**10.** The Fonds shall have its head office at the place determined by the Government; a notice of the location or of any change of location of the head office shall be published in the *Gazette officielle du Québec*.

The Fonds may hold its sittings anywhere in the province of Québec.

**11.** Two members constitute a quorum of the Fonds. In the case of a tie-vote, the president has a casting vote.

An administrator having a personal interest related to an application for assistance must declare his interest and must abstain from participating in the decision, under pain of forfeiture of office.

However, if such an interest results solely from the fact that the administrator is a member of the group on behalf of which an application for assistance is made to the Fonds, the administrator shall participate in the decision but must declare his interest.

**12.** The secretary and the other members of the personnel of the Fonds are appointed and remunerated according to the standards and scales established by regulation of the Fonds.

**13.** Minutes of the sittings of the Fonds approved by the administrators are authentic; the same applies to copies or extracts certified by the president or the secretary.

**14.** The fiscal year of the Fonds ends on 31 March each year.

**15.** Not later than 1 September each year, the Fonds shall send its budget to the Ministre de la justice for the ensuing fiscal



year. Such budget shall be without effect so long as it has not been approved by the Minister.

The Government may dismiss any administrator of the Fonds who acquiesces to an expenditure not provided for by the budget of the Fonds, except an expenditure not exceeding the revenues of the Fonds not provided for in the budget.

**16.** The Fonds shall send to the Ministre de la justice, not later than 30 June each year, a report of its activities for the previous fiscal year.

The Minister shall table such report before the Assemblée nationale if it is in session, or, if it is not in session, within thirty days from the opening of the next session or resumption, as the case may be.

**17.** The Fonds shall at any time give to the Ministre de la justice any information or report he requires on its activities.

**18.** The Vérificateur général shall, each year and, in addition, whenever the Government so orders, audit the books and accounts of the Fonds.

## CHAPTER III

### ASSISTANCE

#### DIVISION I

##### GRANTING ASSISTANCE

**19.** Every representative and every person intending to be ascribed such status may apply in writing for assistance from the Fonds.

**20.** The applicant shall set forth in his application the basis of his claim and the essential facts determining its exercise, and shall describe the group on behalf of which he intends to bring or is bringing the class action.

He shall also state his financial condition and that of the members of the group who have made themselves known; he shall

indicate the purposes for which the assistance is intended to be used, the amount required, and any other revenue or service available to him.

**21.** The applicant shall certify in his application that the information supplied by him is accurate, and he shall authorize the Fonds to verify the accuracy thereof.

He shall furnish the vouchers and other information the Fonds requires.

**22.** The Fonds shall study the applicant's application and it may, for that purpose, hear the applicant or his attorney.

In order to determine whether to grant assistance, the Fonds shall assess whether the class action may be brought or continued without such assistance; in addition, if the status of representative has not yet been ascribed to the applicant, the Fonds shall consider the probable existence of the right and the probability that the class action will be brought.

The Fonds may defer the study of a part of the application, refuse assistance or grant it, in whole or in part; in all cases, it shall render its decision within one month following receipt of the application.

**23.** If the Fonds defers the study of a part of the application or if it refuses to grant assistance, it shall notify the applicant in writing of its decision and indicate the reasons therefor.

**24.** If assistance is granted, the Fonds shall agree upon the conditions with the applicant or his attorney.

The agreement between the Fonds and the recipient shall, in particular, provide for:

- (a) the amount and use of the assistance;
- (b) the advances that may be paid to the recipient;
- (c) the terms and conditions of producing accounts and expenditures;
- (d) the reports the recipient or his attorney must supply to the Fonds;
- (e) the cases where assistance may be suspended or diminished;
- (f) the terms and conditions of reimbursing the advances received or of assistance, if such is the case.

**25.** An administrator of the Fonds may grant the applicant temporary assistance, which shall not exceed the amount pre-

scribed by regulation of the Fonds, if he considers that immediate assistance is necessary to avoid the loss or non-exercise of the applicant's right and if the Fonds cannot meet in time to decide the applicant's application. The decision of the administrator must be substantiated.

The applicant must reimburse the amounts so received if the Fonds thereafter refuses to grant assistance.

## DIVISION II

### RIGHTS AND OBLIGATIONS OF THE FONDS AND OF THE RECIPIENT

**26.** The recipient is entitled to the payment by the Fonds of the expenses expedient for the preparation or bringing of the class action in the manner provided for in the agreement contemplated in section 24.

**27.** The recipient must notify the Fonds of any fact changing the information supplied in accordance with sections 20 and 21.

He must also send to the Fonds a copy of the judgment of the court authorizing the bringing of the class action or terminating it, ordering the publication of a notice or of such a nature as to amend the agreement.

**28.** The Fonds shall pay for the recipient in the manner provided for in the agreement contemplated in section 24, up to the amount of the assistance:

- (a) the fees of the recipient's attorney;
- (b) the fees and costs of experts and advocates-counsel acting for the recipient;
- (c) the costs and other court expenditures including costs of notification, if they are at the expense of the recipient;
- (d) the other expenses expedient to the preparation or the bringing of the class action.

**29.** The recipient or, if such is the case, his attorney shall reimburse to the Fonds the amounts paid by it up to the amounts they receive from a third party as fees, costs or expenses.

**30.** The Fonds shall file at the office of the Superior Court of the district in which the class action is brought, the conclusions of the decision granting assistance.

The court must hear the Fonds before deciding the payment of costs, determining the fees of the representative's attorney, or approving a transaction on costs or fees.

**31.** A recipient who fails to bring the class action or who is not authorized to bring it, or who loses his status of representative or waives it, is no longer entitled to assistance.

He must then notify the Fonds, report to it, and reimburse to it the advances received and not yet spent.

**32.** Assistance shall cease *pleno jure* if the recipient uses it for purposes other than those agreed upon; in such case, he shall reimburse the amount of assistance received.

### DIVISION III

#### APPEAL

**33.** Every applicant whose application for assistance is denied may appeal from the decision of the Fonds to the Provincial Court by a motion brought within fifteen days of receiving the decision of the Fonds.

The motion shall contain a brief statement of the grounds invoked. It shall be filed at the office of the Provincial Court at the chief place of the judicial district where the applicant is domiciled; it shall be accompanied by a notice of not less than ten days of the date of its presentation and shall be served on the Fonds.

The motion shall not be pleaded in writing but the Court may, upon presentation of the motion, allow the parties to submit the evidence considered necessary.

**34.** The rules of the Code of Civil Procedure respecting proof, hearing and judgment apply *mutatis mutandis* to the appeal brought under this division.

**35.** The appeal is heard and decided by preference.

If the Court decides that the applicant is entitled to assistance, it shall order the Fonds to proceed with the granting of the assistance after agreement with the applicant or his attorney in conformity with section 24.

The decision of the Court is final.

## CHAPTER IV

## REGULATIONS

**36.** The Government may, by regulation:

- (a) fix, for the application of section 40, the percentage withheld by the Fonds from the balance or from a liquidated claim;
- (b) determine the cases where assistance may be granted to persons who do not reside in Québec and establish criteria and standards in that regard.

**37.** The Fonds may, by regulation subject to the approval of the Government:

- (a) determine the form and content of the applications and of the reports to be filed with the Fonds;
- (b) determine the amount that an administrator may commit pursuant to section 25;
- (c) determine the percentage of the assistance that may be remitted to a recipient as an advance payment;
- (d) establish standards and scales for the appointment and remuneration of the secretary and the other members of its staff;
- (e) prescribe rules necessary for its internal management and the conduct of its business.

**38.** No regulation dealing with the matters contemplated in section 36 or in paragraph *a*, *b*, *c* or *e* of section 37 shall be made except after a notice of thirty days published in the *Gazette officielle du Québec*, setting forth the text thereof.

**39.** Every regulation made under sections 36 and 37 comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date fixed therein.

## CHAPTER V

## FINANCIAL PROVISIONS

**40.** If a party to a class action other than a member pays a sum of money in accordance with a judgment or a transaction where the representative was granted assistance, the Fonds is entitled to the reimbursement of the sums paid by it by preference to any other creditor.

In the case of a collective recovery of the claims, the Fonds shall withhold a percentage fixed by regulation of the Government on the balance established under article 1033 or 1034 of the Code of Civil Procedure; in other cases, the Fonds shall withhold a percentage fixed by regulation of the Government on every liquidated claim.

**41.** The Fonds shall not, unless authorized by the Government, make expenditures, assume obligations or contract commitments the cost of which exceeds, in the same fiscal year, the amounts placed at its disposal for the year during which such expenditures, obligations or commitments are made, assumed or contracted.

**42.** At the end of every fiscal year the Fonds shall pay into the consolidated revenue fund the sums withheld by it under section 40.

[[**43.** The sums required for the application of this title shall be taken, for the years 1978/1979 and 1979/1980, out of the consolidated revenue fund and for the subsequent years out of the moneys granted each year for that purpose by the Legislature.]]

## TITLE III

### MISCELLANEOUS PROVISIONS

**44.** The Civil Code is amended by inserting, after article 1237, the following article:

**“1237a.** In the case of a class action provided for by Book Nine of the Code of Civil Procedure, for the purposes of determining the questions of law or of fact dealt with collectively, solely the personal recourse of the representative is considered to determine whether or not proof by testimony may be received, unless the court decides otherwise in the interest of justice.”

**45.** Article 1241 of the said Code is amended by adding at the end the following paragraph:

“In the case of a class action provided for by Book Nine of the Code of Civil Procedure, the judgment deciding questions of law or of fact dealt with collectively has authority as *res judicata* between the parties and all members of the group who have not requested exclusion from the group.”

**46.** Article 2224 of the said Code, amended by section 4 of chapter 98 of the statutes of 1959/1960 and by section 10 of chapter 68 of the statutes of 1972, is again amended by inserting, after the second paragraph, the following paragraph:

“In the case of the class action provided for by Book Nine of the Code of Civil Procedure, the interruption benefits all the members of the group who have not requested their exclusion from the group.”

**47.** Article 2226 of the said Code is amended by replacing the second paragraph by the following:

“If the plaintiff abandon his suit, except to avoid the exclusion provided for in article 1008 of the Code of Civil Procedure;”.

**48.** Article 2230 of the said Code is amended by replacing the first paragraph by the following:

**“2230.** Every act which interrupts prescription with regard to one of joint and several creditors or, in the case of a class action provided for by Book Nine of the Code of Civil Procedure, with regard to the representative, benefits the other creditors or members of the group, as the case may be.”

**49.** The said Code is amended by inserting, after article 2233, the following article:

**“2233a.** Prescription does not run against the member of the group on the account of which a motion for leave to bring a class action provided for by Book Nine of the Code of Civil Procedure is presented or, as the case may be, of the group described in the judgment granting the motion until

the motion is dismissed;

the member is excluded from the action by the description of the group made by the judgment on the motion, an interlocutory judgment or the final judgment of the court;

the motion is declared perempted;

the member requests his exclusion from the action;

the judgment granting the motion is annulled.

Prescription runs again, after a judgment, only when the judgment is no longer susceptible of appeal.”

**50.** The Ministre de la justice is responsible for the application of this act.

**51.** This act shall come into force on the date to be fixed by proclamation of the Government, except the sections excluded by such proclamation, which shall come into force on any later date to be fixed by proclamation of the Government.